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In the Supreme Court of the United States

October Term, 1974

FRANCIS A. RONDEAU,

Petitioner,

vs.

MOSINEE PAPER CORPORATION,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

To the Honorable Warren Burger, Chief Justice of the Supreme Court of the United States and Associate Justices of the United States:

This is a petition by Francis A. Rondeau for a writ of certiorari to review a judgment of the United States Court of Appeals for the Seventh Circuit entered in the case of Mosinee Paper Corporation v. Francis A. Rondeau, et al.; judgment was entered on July 16, 1974.

OPINIONS BELOW

The opinions and orders below are as follows: the opinion and order of the Western District of Wisconsin, filed February 13, 1973 (Appendix A, *infra,* page App. 1); the opinion of the Court of Appeals on review of the Western District of Wisconsin's order, filed July 16, 1974 (Appendix B, *infra,* page App. 23). The District Court opinion and order are reported at 354 F.Supp. 686 (E.D. Wis., 1973); the Circuit Court opinion is not yet officially reported.

JURISDICTION

The decision of the Court of Appeals was entered on July 16, 1974. Petitioner invokes the jurisdiction of this Court under 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

I. Did the Court of Appeals correctly decide that a showing of irreparable harm was not a prerequisite to granting injunctive relief under §13(d) of the Securities and Exchange Act of 1934, 15 U.S.C. §78m(d)?

II. Did the Court of Appeals correctly decide to reverse the District Court and to grant equitable relief against a technical violation of §13(d) more than a year and a half after a proper Schedule 13(d) was filed, with no proxy solicitation or tender offer having occurred in the interim?

STATUTES AND RULES INVOLVED

15 U.S.C. §78aa provides as follows:

> The district courts of the United States, and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have exclusive jurisdiction of violations of this chapter or the rules and regulations thereunder, and of all suits in equity and actions at law brought to enforce any liability or duty created by this chapter or the rules and regulations thereunder. Any criminal proceeding may be brought in the district wherein any act or transaction constituting the violation occurred. Any suit or action to enforce any liability or duty created by this chapter or rules and regulations thereunder, or to enjoin any violation of such chapter or rules and regulations, may be brought in any such district or in the district wherein the defendant is found or is an inhabitant or transacts business, and process in such cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in sections 225 and 347 of Title 28. No costs shall be assessed for or against the Commission in any proceeding under this chapter brought by or against it in the Supreme Court or such other courts.

June 6, 1934, c. 404, § 27, 48 Stat. 902; June 25, 1936, c. 804, 49 Stat. 1921; June 25, 1948, c. 646, § 32(b), 62 Stat. 991; May 24, 1949, c. 139, § 127, 63 Stat. 107.

15 U.S.C. § 78m(d) provides as follows:

> (d)(1) Any person who, after acquiring directly or indirectly the beneficial ownership of any equity security of a class which is registered pursuant to section 12 of this title, or any equity security of an insurance company which would have been required to be so registered except for the exemption contained in section 12(g)(2)(G) of this title, or any equity security issued by a closed-end investment company registered under the Investment Company Act of 1940, is directly or indirectly the beneficial owner of more than 5 per centum of such class shall, within ten days after such acquisition, send to the issuer of the security at its principal executive office, by registered or certified

mail, send to each exchange where the security is traded, and file with the Commission, a statement containing such of the following information, and such additional information, as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors—

(A) the background and identity of all persons by whom or on whose behalf the purchases have been or are to be effected;

(B) the source and amount of the funds or other consideration used or to be used in making the purchases, and if any part of the purchase price or proposed purchase price is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, or trading such security, a description of the transaction and the names of the parties thereto, except that where a source of funds is a loan made in the ordinary course of business by a bank, as defined in section 3(a)(6) of this title, if the person filing such statement so requests, the name of the bank, shall not be made available to the public;

(C) If the purpose of the purchases or prospective purchases is to acquire control of the business of the issuer of the securities, any plans or proposals which such persons may have to liquidate such issuer, to sell its assets to or merge it with any other persons, or to make any other major change in its business or corporate structure;

(D) the number of shares of such security which are beneficially owned, and the number of shares concerning which there is a right to acquire, directly or indirectly, by (i) such person, and (ii) by each associate of such person, giving the name and address of each such associate; and

(E) information as to any contracts, arrangements or understandings with any person with respect to any securities of the issuer, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guaranties of loans, guaranties against loss or guaranties of profits, division of losses or profits, or the giving or withholding of proxies, naming the persons with whom such contracts, arrangements, or understandings have been entered into, and giving the details thereof.

(d)(2) If any material change occurs in the facts set forth in the statements to the issuer and the exchange, and in the statement filed with the Commission, an amendment shall be transmitted to the issuer and the exchange and shall be filed with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(d)(3) When two or more persons act as a partnership, limited partnership, syndicate, or other group for the purpose of acquiring, holding, or disposing of securities of an issuer, such syndicate or group shall be deemed a "person" for the purposes of this subsection.

(d)(4) In determining, for purposes of this subsection, any percentage of a class of any security, such class shall be deemed to consist of the amount of the outstanding securities of such class, exclusive of any securities of such class held by or for the account of the issuer or a subsidiary of the issuer.

(d)(5) The Commission, by rule or regulation or by order, may permit any person to file in lieu of the statement required by paragraph (1) of this subsection or the rules and regulations thereunder, a notice stating the name of such person, the number of shares of any equity securities subject to paragraph (1) which are owned by him, the date of their acquisition and such other information as the Commission may specify, if it appears to the Commission that such securities were acquired by such person in the ordinary course of his business and were not acquired for the purpose of and do not have the effect of changing or influencing the control of the issuer nor in connection with or as a participant in any transaction having such purpose or effect.

(d)(6) The provisions of this subsection shall not apply to—

(A) any acquisition or offer to acquire securities made or proposed to be made by means of a registration statement under the Securities Act of 1933;

(B) any acquisition of the beneficial ownership of a security which, together with all other acquisitions by the same person of securities of the same class during the preceding twelve months, does not exceed 2 per centum of that class;

(C) any acquisition of any equity security by the issuer of such security;

(D) any acquisition or proposed acquisition of a security which the Commission, by rules or regulations or by order, shall exempt from the provisions of this subsection as not entered into for the purpose of, and not having the effect of, changing or influencing the control or the issuer or otherwise as not comprehended within the purposes of this subsection.

Fed. R. Civ. Pro. 65(b) provides as follows:

(b) *Temporary Restraining Order; Notice; Hearing; Duration.* A temporary restraining order may be granted without written or oral notice to the adverse party or his attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting his claim that notice should not be required. Every temporary restraining order granted without notice shall be indorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed 10 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if he does not do so, the court shall dissolve the temporary restraining order. On 2 days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

STATEMENT OF THE CASE

Respondent, Mosinee Paper Corporation (hereinafter "Mosinee"), the plaintiff below, is a Wisconsin corporation engaged in the business of manufacturing, converting and selling specialty papers, paper products and plastics. Its principal office is at Mosinee, in Central Wisconsin. It has manufacturing facilities at Mosinee, Green Bay and Columbus, Wisconsin. Mosinee's only class of equity security outstanding and registered pursuant to section 12 of the Securities Exchange Act of 1934 is common stock, of which there were 806,177 shares outstanding as of August 31, 1971; 40,309 shares would constitute five percent of the outstanding shares.

Petitioner, Francis A. Rondeau (hereinafter "Rondeau"), a resident of Mosinee, Wisconsin, is president and general manager of Mosinee Cold Storage, Inc.; president of Wausau Cold Storage Company, Inc.; vice president and a director of Francis Rondeau, Inc.; president and a director of Rondeau Foundation; and a limited partner of Rondeau & Company. Rondeau and the aforementioned corporations were defendants below. Rondeau's business activities include the cold storage business, banking and a variety of investments.

Between April 5, 1971 and August 4, 1971 petitioner, Rondeau, purchased 66,577 shares of stock in respondent, Mosinee. On July 9, 1971 respondent's stock register indicated that petitioner controlled more than 5% of its issued and outstanding stock. It was not until July 30, 1971 that petitioner realized that due to changes in the law he was required to file a Schedule 13(d) because he had acquired more than 5% of the stock in respondent. Upon learning of this requirement Rondeau placed no further orders for that corporation's stock, and he retained counsel to prepare the proper schedule which was duly filed on August 25, 1971.

Fearing Mr. Rondeau would attempt to take control of it, respondent, on the basis of the §13(d) violation, brought an action seeking to prevent petitioner from buying more shares of respondent's stock, voting the shares he already had, or seeking to gain control of the corporation; the complaint also sought damages in an unspecified amount and further sought to force divestiture of an unspecified number of the corporation's shares. Jurisdiction in the court below was based on 15 U.S.C. §78aa. The issues were joined, discovery was taken, and petitioner, Rondeau, defendant below, moved for summary judgment. The District Court granted that motion because it found no danger of irreparable harm existed as to the respondent corporation, and because it found petitioner's violation of §13(d) to be the result of unintentional oversight, rather than intentional covert, and conspiratorial conduct. The respondent corporation appealed.

On appeal the United States Court of Appeals for the Seventh Circuit, in a split decision (two to one), reversed the District Court. The grounds for reversal were: 1) that no danger of irreparable harm was necessary for injunctive relief under §13(d); and 2) that violation of §13(d) in and of itself mandated injunctive relief against the violator regardless of the reasons for the violation. The dissenting judge voted to affirm the trial court.

REASONS FOR GRANTING THE WRIT

I. The Decision Below Conflicts With Other Caselaw of Another Court of Appeals.

The decision of the Court of Appeals for the Seventh Circuit as to granting relief against a 13(d) violation, even when no deliberate, covert and conspiratorial conduct has been shown, is in conflict with a decision of the Court of Appeals for the Eighth Circuit on the same question, in the case of *Tri-State Motor Transit Co.* v. *National City Lines,* No. 73-867 (April 4, 1974), unreported.

The Court of Appeals for the Seventh Circuit's holding that proof of violation of §13(d) without more requires the granting of equitable relief creates a precedent which not only conflicts with caselaw in another circuit, but which also creates for the statute, itself granting no remedy, a lower threshold for imposition of penalties than exists in similar areas of securities law. Even the Securities and Exchange Commission, the agency charged with primary responsibility for enforcing securities law, is not entitled to injunctive relief unless it proves there is a reasonable expectation of future violations, *S.E.C.* v. *Culpepper,* 270 F.2d 241 (2nd Cir. 1959), *S.E.C.* v. *Universal Service Association,* 106 F.2d 232 (7th Cir. 1939), see also *U.S.* v. *W. T. Grant Co.,* 345 U.S. 629 (1953). The Court of Appeals for the Seventh Circuit decision therefore grants to a private party a power for relief hitherto denied even the S.E.C. By ordering equitable relief under §13(d) without at least a showing of a danger of recurrent violation the Seventh Circuit has placed itself in conflict with its own prior caselaw, and the standard body of law on this issue throughout the federal judiciary.

II. The Case Presents an Important Question Which Should Be Settled By This Court.

The decision of the Court of Appeals for the Seventh Circuit as to the immateriality of proof of irreparable injury before injunctive relief may be granted for a §13(d) violation involves an important question of federal law and procedure which has not been, but should be, settled by this Court. It also raises serious questions concerning the viability of a long standing general body of law.

A showing of irreparable harm has traditionally been considered an essential prerequisite to issuance of the equitable remedy of injunction, *e.g. Sellers* v. *Regents of University of California,* 432 F.2d 493 (9th Cir., 1970), *cert. den.* 401 U.S. 981 (1971); *Reed Enterprises* v. *Corcoran,* 354 F.2d 519 (D.C. Cir., 1965); *Ozark Air Lines, Inc.* v. *Cox,* 326 F. Supp. 1113 (E.D. Mo., 1971). This cornerstone of equitable law should not be overturned. If the Court of Appeals' decision remains standing, shareholders of the same corporation will be subject to different interpretations of the same law in different circuits. Moreover, it would constitute a *sub rosa* reversal of established general equitable practice in the Seventh Circuit.

In the past, this Court has been careful to maintain uniformity in the construction of the federal rules of practice, particularly when those rules are uncodified. *Hickman* v. *Taylor,* 329 U.S. 495 (1947). The decision of the Circuit Court in the present case requires exercise of this Court's power to maintain uniformity with regard to the equitable grounds for injunctive relief.

III. The Decision Below Probably Conflicts With The Applicable Caselaw of This Court.

The decision of said Court of Appeals that proof of irreparable injury is not a prerequisite to granting of injunctive relief, is in conflict with applicable caselaw of this Court, *i.e. Beacon Theatres* v. *Westover,* 359 U.S. 500 (1959); *Pennsylvania* v. *Wheeling & Belmont Bridge Co.,* 54 U.S. (13 How.) 518 (1851).

As noted above, irreparable injury has traditionally been a prerequisite to granting an injunction on a private cause of action. This Court has been a leader in establishing that tradition through its promulgation of rules of procedure, Federal Rule of Civil Procedure 65(b), and its decisions, *Beacon* v. *Westover, supra; Cameron* v. *Johnson,* 390 U.S. 611 (1968), *Locomotive Engineers* v. *M.-K.-T. R. Co.,* 363 U.S. 528 (1960). The decision of the Circuit Court in the present case is contrary to the spirit and letter of this Court's actions in the area of injunctive relief.

CONCLUSION

For the foregoing reasons, it is submitted that this petition for certiorari should be granted.

Respectfully submitted,

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Dated October 11, 1974

APPENDIX

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MOSINEE PAPER CORPORATION,
a Wisconsin corporation, Plaintiff,

v.

FRANCIS A. RONDEAU, MOSINEE COLD STORAGE, INC., a Wisconsin corporation, FRANCIS RONDEAU, INCORPORATED, a Wisconsin corporation, WAUSAU COLD STORAGE COMPANY, INC., a Wisconsin corporation, RONDEAU FOUNDATION, a Wisconsin non-stock, non-profit corporation, RONDEAU & COMPANY, a Wisconsin limited partnership, GEORGE RONDEAU, FIRST WISCONSIN NATIONAL BANK OF WAUSAU, a Wisconsin corporation, and FIRST WISCONSIN NATIONAL BANK OF MILWAUKEE, a Wisconsin corporation,

Defendants.

OPINION AND ORDER

71-C-335

(Filed February 13, 1973)

This is a civil action brought under the Securities Act of 1934, as amended. Plaintiff alleges that defendants have violated §§ 13(d) and 14(e) of the Williams Act, 15 U.S.C. §§ 78m(d) and 78n(e), and §10(b) and Rule 10b-5 of the Securities and Exchange Act, 15 U.S.C. §78j(b), 17 C.F.R. §240.10b-5. Plaintiff has requested an injunction restraining defendants from voting any common stock of plaintiff held or acquired in violation of the Securities Exchange Act, from using such stock as collateral to secure funds for the purpose of acquiring control of plaintiff, and from acquiring additional common stock of plaintiff until the effects of defendants' violations have been fully dissipated. Plaintiff has also demanded that defendants be required to divest themselves of all or some of defendants' shares of plaintiff's common stock, acquired in violation of the Act. Plaintiff finally requests damages for injuries sustained as the result of defendants' illegal activities. Jurisdiction is present under 15 U.S.C. §78aa. Defendants First Wisconsin National Bank of Wausau and First Wisconsin National Bank of Milwaukee have filed a motion to dismiss. Plaintiff moved for a preliminary injunction but subsequently said motion was voluntarily withdrawn. A motion for summary judgment in favor of all of the defendants is presently before this court.

I find and conclude that there is no genuine issue of material fact as to the propositions contained in the section of this opinion entitled "Facts."

FACTS

Plaintiff, Mosinee, is a Wisconsin corporation having its principal place of business at Mosinee, Wisconsin, where it is engaged in the business of manufacturing, converting and selling specialty papers, paper products and plastics. Its only class of equity security outstanding and registered pursuant to Section 12 of the Securities Exchange Act, 15 U.S.C. §781, is common stock, of which there were 806,177 shares outstanding as of August 31, 1971.

Plaintiff, in recent history and until 1970, had increasing sales and profits. It had a decline in earnings in 1970 and in the first quarter of 1971. In the spring of 1971, the directors of Mosinee reduced its dividend.

The president of the plaintiff is Clarence Scholtens; the Chairman of the Board of Directors is John E. Forester. Collectively, Mr. Forester, who has a law degree

but who does not practice law as his occupation, his wife, and trusts established by Mr. and Mrs. Cyrus Yawkey and Mr. Aytchomonde P. Woodson (son-in-law of the Yawkeys) are the largest stockholder of the plaintiff corporation. Mr. Forester is a director of many corporations.

Defendant Francis A. Rondeau, a resident of Mosinee, Wisconsin, is president and general manager of defendant Mosinee Cold Storage, Inc.; president of defendant Wausau Cold Storage Company, Inc.; vice president and a director of defendant Francis Rondeau, Inc.; president and a director of defendant Rondeau Foundation; and a limited partner of defendant Rondeau and Company. Rondeau's formal education ended upon graduation from high school. His present activities include the cold storage business and a variety of investments.

Defendants Mosinee Cold Storage, Francis Rondeau, Inc., and Wausau Cold Storage Company, are Wisconsin corporations having their principal places of business in Wisconsin. Defendant Rondeau Foundation is a Wisconsin nonstock nonprofit charitable corporation with its principal office in Wisconsin. Defendant Rondeau & Company is a Wisconsin limited partnership with its principal place of business in Wisconsin. It is composed of one general partner, defendant George Rondeau and nine limited partners, including defendant Francis Rondeau.

Defendant George Rondeau, a resident of Wisconsin and son of defendant Francis Rondeau, is manager, treasurer, and director of defendant Wausau Cold Storage Company, and is general partner of defendant Rondeau & Company.

Defendants First Wisconsin National Bank of Wausau and First Wisconsin National Bank of Milwaukee are Wisconsin corporations with their principal places of business in Wisconsin.

In the winter of 1971, Mr. Francis Rondeau (hereinafter "Mr. Rondeau"), who was considering investing in plaintiff corporation, openly expressed the opinion on a number of occasions that the plaintiff's stock was a good investment. He made his first purchase in his own name, on April 5, 1971, of 500 shares at $12.50 per share. This initial purchase was registered on the books of the plaintiff's stock transfer agent on April 28, 1971. By May 17, 1971, Mr. Rondeau had acquired a total of 40,413 shares of plaintiff's common stock. It was not until July 9, 1971, however, that plaintiff's stock register indicated that Mr. Rondeau and the other defendants herein were record owners of more than 40,309 shares. (I find that given the 806,177 shares of stock outstanding, it requires approximately 40,309 shares to constitute 5% of the issued and outstanding stock of the plaintiff.) From April 5, 1971, through August 4, 1971, the defendants acquired a total of 66,577 shares of stock.

In April, 1971, both Mr. Scholtens and Mr. Forester learned that Mr. Rondeau had made several purchases of plaintiff's stock. By June 1, 1971, the plaintiff was aware that Mr. Rondeau was president of both the Mosinee and Wausau Cold Storage companies. When Mr. Rondeau's holdings reached 18,000 shares on the plaintiff's records, Mr. Scholtens contacted Mr. Rondeau by telephone, welcoming him as a new substantial shareholder and inquiring into his purpose in purchasing shares. Mr. Rondeau stated that he felt the stock was underpriced and was a good investment; that he intended to continue to purchase shares and might acquire up to 40,000 shares (under 5% of the outstanding stock); and that he was "perfectly happy with the operation."

Mr. Orr, an employee of Forwood, Inc., a corporation presided over by Mr. Forester, and which provides management, accounting, and investment services to the majority shareholders of plaintiff, kept a cumulative total

of acquisitions by Mr. Rondeau during 1971; he reported this total to Mr. Forester upon request.* (*=IN CAMERA)

I find that Mr. Rondeau did not know that he was required to file a Schedule 13D under the Williams Act when his holdings exceeded 5% until he consulted his attorney on or about July 30, 1971, immediately after receiving a letter from Mr. Forester stating that Rondeau's activity in plaintiff's stock may have created problems under the Federal Securities Laws. (In July, Mr. Rondeau's holdings of plaintiff's stock had exceeded 60,000 shares.) Mr. Rondeau had his accountants work continuously thereafter to provide the information needed for the 13D Schedule. Mr. Rondeau placed no further orders for plaintiff's stock after July 30, 1971, although some previously placed orders were filled in August, 1971. He filed his first 13D Schedule on August 25, 1971; on September 2, 1971, this action was commenced; on September 29, 1971, an amendment and supplement to defendants' first 13D Schedule was filed.

Mr. Rondeau had been advised in the past that he didn't need to file anything with the SEC until his holdings of any one company exceeded 10%, which had been the law until December of 1970, when the Securities and Exchange Act was amended to reduce the requirement in Section 13(d)(1) from 10% to 5%. 15 U.S.C. §78m(d)(1). Mr. Forester was also unfamiliar with the requirements of the Williams Act until a few days before he wrote the letter to Mr. Rondeau, which is dated July 30, 1971.

I find that during July, it was common knowledge, "street talk" among brokers, bankers, and business men in the community, that Mr. Rondeau was purchasing plaintiff's stock in substantial quantities. Rumors that Mr. Rondeau was purchasing stock began as early as June, but were vague with respect to the extent of the purchases.

In late 1970, Mr. Forester, for himself, his wife and five of the trusts he managed, decided on the basis of a security analyst's recommendation to invest trust assets in the paper industry. Purchases of the plaintiff's stock began at that time but were discontinued in April, 1971, because of an unusual opportunity to purhase a large block of stock in another paper company. However, that opportunity did not materialize, and some portion of the cash accumulated for the first investment was instead invested in plaintiff's stock in late July.* Beginning July 30, 1971, the same day that Mr. Forester had communicated by letter with Mr. Rondeau, and for the next four trading days, Mr. Forester and the trusts he managed purchased over 20,000 shares of plaintiff's stock (not an unusual volume of transactions for the trusts involved).

Although any time a party purchases a substantial portion of a corporation's outstanding stock it is possible to infer that the purchaser is interested in obtaining control, I find that there is no concrete evidence in the record warranting a finding that Mr. Rondeau seriously considered obtaining control of the plaintiff corporation prior to the time that he conversed with his attorney by telephone, after receiving Mr. Forester's letter of July 30, 1971. I find that Mr. Rondeau and the other defendants did not engage in intentional covert, and conspiratorial conduct in failing to timely file the 13D schedule.

I find that Mr. Rondeau's purchases of plaintiff's stock has created concern on the part of the plaintiff's present management, some of the plaintiff's employees and some shareholders with respect to the consequences of a possible tender offer and subsequent change in control of the company, e.g. the future relationship that Mr. Rondeau might have with the Board, with long-time customers, and with trade unions. I further find that this anxiety may have been somewhat worsened by the rumors about Mr. Rondeau's intentions which resulted from his failure to articulate his purposes in a timely 13D Schedule.

Although the total amount of shares purchased was correctly stated in Mr. Rondeau's 13D Schedule filed on August 25, 1971 (66,577 shares), the allocation of shares among the Rondeau entities shown on said 13D Schedule was inaccurate. The record ownership of these shares is correctly reflected in the defendants' amendment of the 13D Schedule, filed on September 29, 1971:

	Number of Shares of Record and Beneficially
Francis A. Rondeau	34,679
Mosinee Cold Storage, Inc.	11,020
Francis Rondeau, Incorporated	7,060
Wausau Cold Storage Company, Inc.	3,600
Francis A. Rondeau Foundation, Incorporated	1,957
Rondeau & Company	4,600
Ronco	264
Mosiness Cold Storage, Inc., Wausau Cold Storage Company, Inc., and Francis Rondeau, Incorporated, as participating Employers in The Emjay Corporation Master Profit Sharing Plan dated October 14, 1968	3,397
	66,577

Item 3 of Schedule 13D requires a statement as to the filer's source and amount of funds or other consideration:

> State the source and amount of funds or other consideration used or to be used in making the purchases, and if any part of the purchase price or proposed purchase price is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, or trading the securities, a description of the transaction and the names of the parties thereto. 33 F.R. 11,016 (July 30, 1968) as amended by 33 F.R. 14,110 (Aug. 30, 1968).

In the 13D Schedule filed August 25, 1971, Mr. Rondeau described the sources of his funds as set out fully in the margin.[1] In the amendment filed September 29, 1971, Rondeau further amplified the sources of funds as set out in the margin.[2]

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[1] All purchases of the Issuer's common stock made to date have been financed as follows:

1. Approximately $598,000 from Francis A. Rondeau of which approximately $300,000 came from Mr. Rondeau's own funds and the remainder borrowed from Rondeau & Company on open account.
2. Mosinee Cold Storage, Inc. borrowed $30,000 from the First Wisconsin National Bank of Wausau on a 90-day note at 5¼% secured by certain securities owned by it and related companies named herein. This loan has been repaid.
3. Francis Rondeau, Incorporated borrowed $100,000 from the First Wisconsin National Bank of Wausau on a 90-day note at 5¼% secured by certain securities owned by it and related companies named herein. This loan has been repaid.
4. Rondeau & Company borrowed $307,000 from the First Wisconsin National Bank of Milwaukee at an annual interest rate of 6% secured by certain securities owned by it and related companies named herein. This loan has been repaid.

NOTE: Of the funds identified in 1 to 4 above, approximately $865,500 was utilized to purchase common stock of the Issuer and the balance used to make purchases of securities of other corporations.

Francis A. Rondeau and one or more of his controlled corporations and other entities presently are considering investing approximately $3,600,000 of additional funds in the common stock of the Issuer. These funds are expected to be obtained as follows:

(a) $1,200,000 to be invested by Mosinee Cold Storage, Inc., out of proceeds to be received from the sale of real property located in Marathon County, Wisconsin: such transaction is expected to close within the next 12 months;

(b) Francis A. Rondeau and his associates propose to sell approximately $1,000,000 of marketable securities to provide additional funds for investment in common stock of the Issuer;

(c) The balance of the monies, if invested, will be borrowed although no commitments for any such borrowings or loans have been entered into or have gone beyond the negotiation and discussion stage.

[2] 1. With respect to Item 3, the undersigned, Mosinee Cold Storage, Inc., and Francis Rondeau, Incorporated, now state and aver that no part of the proceeds of loans received from First Wisconsin National Bank of Wausau as referred to in paragraphs 2 and 3 of said Item 3 were utilized for the purchase of common stock of the Issuer. However, it has now been determined that Mosinee Cold Storage, Inc. borrowed $50,000 on May 11, 1971, from First Wisconsin National Bank of Wausau at 5½% interest, secured by certain securities, certificates of deposit and insurance policies owned by it and related companies named in the Schedule 13D, and Wausau Cold Storage Company, Inc. borrowed $50,000 on June 29, 1971, from First Wisconsin National Bank of Wausau at 5½% interest, secured by certain securities, certificates of deposit and insurance policies owned by it and related companies named in the Schedule 13D. An undetermined portion of the proceeds of these loans were advanced by said corporations to Francis A. Rondeau and used by him to purchase shares of common stock of the Issuer. Both of the aforesaid loans have been fully repaid.

2. Further, with respect to Item 3, the undersigned, Rondeau & Company borrowed the aggregate sum of $307,000 at 6% annual interest from First Wisconsin National Bank of Milwaukee between May 10, 1971, and July 20, 1971, of which approximately $187,000 was used to purchase common stock of the Issuer in the name of Rondeau & Company and of Francis A. Rondeau and Francis A. Rondeau, Nominee. The above loans were secured by the collateral pledge to said Bank of shares of common stock of the Issuer and of other securities owned by Francis A. Rondeau and/or his associates identified in this Amended Schedule 13D. The loans from First Wisconsin National Bank of Milwaukee were paid, in full, on August 27, 1971, with proceeds received by Francis A. Rondeau and/or his associates from the sale of securities other than shares of common stock of the Issuer.

3. Further, with respect to Item 3, Francis A. Rondeau states and avers that subsequent to August 9, 1971, he has had discussions

(Footnote continued)

About August 15, 1971, Mr. Rondeau sold 10,000 First Wisconsin Bankshares, which had a market value of $32/share or a total value of $320,000, to Mr. Tom Werner, pursuant to an agreement whereby Mr. Rondeau had the right to repurchase the shares within twelve months at his option, at the price of $32,000, plus interest at the rate of approximately 6%. I find that whether this sale with an option to repurchase is denominated a sale or a loan, Mr. Rondeau had no obligation to disclose this transaction in the 13D Schedule as the cash realized from the transaction was not obtained for the purpose of buying plaintiff's stock nor was it in fact so disbursed. I further find that Item 3 of the 13D Schedule, as amended, is adequate and does not contain misrepresentations of fact.

A few days after Mr. Rondeau's August 25, 1971, Schedule 13D was received by the plaintiff, plaintiff wrote to each of its shareholders and issued a press release calling attention to Mr. Rondeau's statement that he was considering a tender offer. For a few days after this press release, plaintiff's stock was quoted as high as $19-21/share. Within a few days it dropped back to the $12.50-$14 range, where it remained.

OPINION

Plaintiff first opposes defendants' motion on the grounds that there are genuine issues of fact which are

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(Footnote continued)

with representatives of First Wisconsin National Bank of Milwaukee and Marine National Exchange Bank of Milwaukee relative to he and/or his associates obtaining loans for the purchase of additional shares of common stock of the Issuer. No commitment or agreements relative to any such borrowing has been received or entered into.

unresolved; more particularly, that there is a genuine issue as to whether defendants' conduct was intentional, covert and conspiratorial and as to whether the 13D Schedule, filed by Rondeau, both in its original and amended form, misstates facts concerning his sources of financing purchases of plaintiff's stock. As set out in the above section entitled "Facts," I have made findings from the record herein on both of these issues in favor of the defendants.

Plaintiff also opposes defendants' motion for summary judgment on the grounds that the defendants have not established that they are entitled to judgment as a matter of law. The parties moving for summary judgment must not only establish that the material facts are not in dispute, but must also demonstrate that they are entitled to judgment as a matter of law. Fed. R. Civ. P. 56(e). All inferences are to be drawn against the movant and in favor of the party opposing the motion. 3 *Barron & Holtzoff, Federal Practice and Procedure* §1234.

Section 13(d) of the Securities and Exchange Act provides in part:

> Any person, who, after acquiring directly or indirectly the beneficial ownership of any equity security of a class which is registered . . . is directly or indirectly the beneficial owner of more than 5 percentum of such class shall, within ten days after such acquisition, send to the issuer of the security at its principal executive office . . . , send to each exchange where the security is traded, and file with the Commission, a statement containing such information, and such additional information, as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors. . . . 15 U.S.C. §78m(d)(1).

In the instant case, the defendants admit that by failing to file a 13D Schedule by May 27, 1971, they violated the filing requirements of the Williams Act, 15 U.S.C. §78m. Defendants further urge, however, that because a legally sufficient 13D Schedule was subsequently filed, and in the absence of a deliberate, covert conspiracy to take over the plaintiff corporation, plaintiff is not entitled to any relief in this action. Defendants submit that an analysis of the language of §13(d) of the Securities and Exchange Act, of the legislative history of the Act and of the judicial interpretation of the statute reveals: (1) that §13(d) is a "notice statute," without provision for sanctions and that the requirement of notice has been satisfied by the late filing in the instant case; (2) that in the absence of deliberate and covert noncompliance with the requirements of the Act, and in the absence of a showing by the plaintiff of irreparable harm, the equitable relief requested by the plaintiff is inappropriate; and (3) that the imposition of sanctions in the instant case would constitute a misapplication of the Williams Act as a barrier to stockholders' democracy, perpetuating entrenched management without majority support.

The plaintiff contends that the violation conceded by the defendants warrants injunctive relief; that the plaintiff is not, as a matter of law, required to prove "irreparable injury" as an element of its claim for equitable relief; and that an appropriate injunction can be fashioned to meet the circumstances of this case.

The complaint alleges that plaintiff has suffered irreparable harm as a result of the defendants' failure to timely file the 13D Schedule. However, the plaintiff has not directed this court's attention to any evidentiary material

in the voluminous record which would support a finding of irreparable harm. Although the defendant has the burden of proof upon a motion for summary judgment, the plaintiff may not rest upon the mere allegations of his pleadings to establish that there is a genuine issue of fact. Fed. R. Civ. P. 56(e). The defendant here has introduced testimony by both the President and the Chairman of the Board of the plaintiff corporation indicating that the damage sustained by the plaintiff from Mr. Rondeau's activities in general and his late filing of the 13D Schedule in particular, stems from the anxiety of its employees and shareholders about a possible future change in control of the corporation. Absent any other evidence, I must conclude that the plaintiff has not suffered "irreparable harm."

Although one court has stated in dicta that the absence of irreparable harm does not necessarily preclude injunctive relief where the public interest is involved (here the plaintiff asserts the public interest in private enforcement of the federal securities laws and in deterrence of noncompliance with disclosure requirements), *Sisak* v. *Wings & Wheels Express, Inc.*, 1971 CCH Fed. Sec. L., Rep. §92,991 at 90,670 (S.D.N.Y. 1970), other courts have expressly stated that a finding of irreparable harm is a prerequisite to injunctive relief. *See Ozark Airlines, Inc.* v. *Cox,* 326 F. Supp. 1113, 1118-1119 (E.D.Mo. 1971).

Judge Kaufman's analysis of the history and purposes of §13(d) is helpful in deciding what relief is appropriate for violations of the Act followed by subsequent compliance:

> The 1960's on Wall Street may best be remembered for the pyrotechnics of corporate takeovers and the phenomenon of conglomeration. Although individuals

seeking control through a proxy contest were required to comply with section 14(a) of the Securities Exchange Act and the proxy rules promulgated by the SEC, and those making stock tender offers were required to comply with the applicable provisions of the Securities Act, before the enactment of the Williams Act there were no provisions regulating cash tender offers or other techniques of securing corporate control. According to the committee reports:

> "The [Williams Act] would correct the current gap in our securities laws by amending the Securities Exchange Act of 1934 to provide for full disclosure in connection with cash tender offers and other techniques for accumulating large blocks of equity securities of publicly held companies." S. Rep. No. 550 at 4; H.R. Rep. No. 1711 at 4, U.S. Code Cong. & Admin. News p. 2814.

Specifically, we were told, "the purpose of section 13(d) is to require disclosure of information by persons who have acquired a substantial interest, or increased their interest in the equity securities of a company by a substantial amount, within a relatively short period of time." S. Rep. No. 550 at 7; H.R. Rep. No. 1711 at 8, U.S. Code Cong. & Admin. News p. 2818. Otherwise, investors cannot assess the potential for changes in corporate control and adequately evaluate the company's worth. *See generally* Comment, Section 13(d) and Disclosure of Corporate Equity Ownership, 119 U. Pa.L.Rev. 853, 854-55, 858, 865-66 (1971).

That the purpose of section 13(d) is to alert the marketplace to every large, rapid aggregation or accumulation of securities, regardless of technique employed, which might represent a potential shift in corporate control is amply reflected in the enacted provisions.

GAF Corporation v. *Milstein*, 453 F.2d 709, 717 (2nd Cir. 1971). The history of the Act, however, also clearly

reveals that §13(d) was not enacted to provide protection for management against raiders, as there is substantial disagreement as to whether tender offers and stock acquisitions in pursuit of control constitute a desirable and healthy aspect of stockholder democracy. *GAF Corporation* v. *Milstein*, 324 F. Supp. 1062, 1069-1070 (S.D.N.Y. 1971), *rev'd in part, aff'd in part*, 453 F. 2d 709 (2nd Cir. 1971). *See* H.R. Report No. 1711 at 4, U.S. Code Cong. & Admin. News p. 2811-2821. *See also Bath Industries* v. *Blot*, 427 F.2d 97, 109 (7th Cir. 1970).

Even without concluding that irreparable harm is a prerequisite to relief, it would seem that the instant case provides a particularly inappropriate occasion to fashion equitable relief for the plaintiff. First, the only harm documented is the "anxiety" which could be expected to accompany any change in management, a predictable consequence of shareholder democracy. Congress, in enacting the Williams Bill, attempted to avoid tipping the balance of regulation either in favor of management or in favor of the person making the takeover bid. H.R. Report No. 1711, *supra* at 2813. Secondly, the record here does not reveal that the defendants engaged in a secret conspiracy to accumulate stock from unsuspecting shareholders before exposing their intention of gaining control in a 13D Schedule. Instead, the record indicates that defendants openly purchased substantial quantities of stock, that management and other brokers and businessmen were aware of these purchases, and that the defendants promptly complied with the Williams Act soon after becoming aware of the filing requirements and after their plans to attempt to obtain control crystallized. Finally, I note that all of the information required by the Williams Act has been available to both stockholders and management since September 29, 1971, and the record does not reveal that the defendants have proceeded with a tender offer.

The plaintiff cites the following passage from *Bath, supra,* to support its argument that the late filing of defendants' 13D Schedule neither cures nor vindicates the purpose of §13(d):

> If defendant-appellants were in fact required to file statements . . . sometime near midsummer of 1969, the filing of 13D Schedules in October, 1969, may well be insufficient to cure the failure to file earlier. The purpose of the filing and notification provisions is to give investors and stockholders the opportunity to assess the insurgents' plans before selling or buying stock in the corporation. It additionally gives them the opportunity to hear from incumbent management on the merit or lack of merit of the insurgents' proposals. If the defendant-appellant's late filing is sufficient, then no insurgent group will ever file until news of their existence and plan leaks out and prompts a law suit. By that time it will be too late to avoid the evils which the Williams Act is designed to eliminate. *Bath, supra* at 113.

Although this language is broad and sweeping, it should be noted that the Court of Appeals in *Bath* was affirming the trial court's decision to grant a preliminary injunction, and emphasized that in this area, where a federal statute creates legal rights and only a general right to sue, the discretion of a district court to fashion remedies is broad. *Bath, supra* at 113.

Furthermore, the facts in *Bath* are distinguishable from the instant case. First, it must be noted that the trial court found that the plaintiff sustained irreparable injury as a result of the defendant's failure to timely file a 13D Schedule. *Bath Industries, Inc.* v. *Blot,* 305 F. Supp. 526, 537-539 (E.D. Wis. 1969); *Bath, supra* at 104. In *Bath,* the defendants conspired and agreed to obtain control of the corporation either by threat of or by a proxy battle, timed to coincide with the expected award of a large governmental contract for which the corporation had been actively contending. Such a proxy fight would severely limit the corporation's chances of being awarded the contract and might consequently cause permanent and irreparable harm. Therefore, unlike here, in *Bath,* irreparable injury to the corporation, as distinguished from its present management, flowed from the covert conduct of the defendants, who secretly accumulated stock and solicited allies so that at the appropriate time they could confront management with a *fait accompli.* Plaintiffs in *Bath* clearly demonstrated that had the defendants filed a timely 13D Schedule, management would have been able to better protect the corporation from losing the contract. Furthermore, at the time of ruling on the preliminary injunction the trial court in *Bath* had not yet determined whether defendants had ever filed an adequate 13D Schedule. The court granted a preliminary injunction to "remain in effect until it is determined that the 13(d) statements that have been or will be filed by the defendants are legally sufficient." *Bath Industries, Inc.* v. *Blot,* 305 F. Supp. 296, 539. In the instant case I have found that the 13D Schedule filed is adequate.

The plaintiff also brings to my attention the decision in *Committee for New Management of Butler Aviation* v. *Widmark,* 335 F. Supp. 146 (E.D.N.Y. 1971). In that case, the court granted a preliminary injunction as relief for defendant's cross-motion asserting that one of the plaintiffs had violated §13(d). However, the *Butler Aviation* case is distinguishable from the instant case in three material respects: first, the plaintiff there concealed his purchases of stock through the use of nominees so that his ownership did not appear on the corporation's stock transfer records; second, the plaintiff in *Butler Aviation* never filed the required 13D Schedule; and finally, the court's decision in that case immediately preceded the annual meeting of the company's shareholders, so there was no opportunity, as here, for the shareholders to be apprised by management of the information which should have been disclosed to them by the party accumulating stock by filing the 13D Schedule.

For these reasons, I conclude that although the plaintiff has established that the defendants have violated §13 (d) of the Williams Act, the plaintiff is not entitled to equitable relief.

The plaintiff claims that the defendants' failure to file a 13D Schedule also violates §§14(e) and 10(b). Section 14(e) provides in part:

> It shall be unlawful for any person to make any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or to engage in any fraudulent, deceptive, or manipulative acts or practices, in connection with any tender offer or request or invitation for tenders, or any solicitation of security holders in opposition to or in favor of any such offer, request, or invitation. 15 U.S.C. §78n(e).

Neither the plaintiff nor the defendants assert that Rondeau has made a public tender offer. Nonetheless the plaintiff contends that the phrase "tender offer" should be construed to include the defendants' series of buy orders prior to the filing of the 13D Schedule in the relatively limited market for the plaintiff's stock. Furthermore, the plaintiff contends that the phrase "in connection with" is broad enough to encompass situations in which a tender offer is being considered.

The plaintiff concedes that it has no authority in point for either of these rather novel propositions. If the plaintiff's contention is based upon the alleged misstatement within the 13D Schedule as finally filed, I note the statement of the district court in *GAF Corp.* v. *Milstein,* 324 F. Supp. 1062 (S.D.N.Y. 1971), that §14(e) was not intended to cover fraudulent misstatements in a §13(d) filing when there has been in fact no public tender offer. *Id.* at 1073. On appeal the Court of Appeals indicated in a footnote that the tender offer transactions covered by §14(e) are distinguishable from §13(d) dealings and that the statutory scheme is as follows: §14(d), 15 U.S.C. §78n(d), requires disclosure by tender offerors; §14(e), 15 U.S.C. §78n(e), the companion section for §14(d), declares that it is illegal to make false and misleading statements in connection with a §14(d) tender offer; §13(d), 15 U.S.C. §78m(d), requires disclosure of acquisition of ownership by any direct or indirect means; and Congress has not enacted a parallel section, equivalent to §14(e), for §13(d). Nonetheless, the Circuit Court concluded that "the obligation to file truthful statements is implicit in the obligation to file with the issuer and *a fortiori,* the issuer has standing under §13(d) to seek relief in the event of a false filing." *GAF Corporation* v. *Milstein,* 453 F.2d 709, 720n.22 (2nd Cir. 1971).

Whether I conclude that relief for false statements in 13D Schedules is afforded under §14(e) as suggested by plaintiff or is implicit in §13(d) as held by the 2nd Circuit, the plaintiff here is not entitled to relief on the basis of this contention, as I have found that the 13D Schedule, as amended, does not contain misrepresentations of material fact nor misleading statements.

I also conclude that plaintiff's assertion that defendants' failure to timely file a 13D Schedule is in itself a fraud and deceit under §14(e) does not justify affording the plaintiff the relief requested. Under plaintiff's construction of §14(e), the purchaser of stock "in connection with any tender offer" would, in order to avoid committing fraud, have the same responsibility for prompt filing as is required both under §13(d) and §14(d). Even assuming that this rather bizarre construction of these sections in this overlapping manner is correct, I conclude that the restraints upon the granting of equitable relief implicit in the legislative history of §13(d) and in the case law interpreting that section would also have to be applied to cases arising under §14(e). Otherwise a defendant's liability would depend upon the plaintiff's arbitrary choice of sections and the purposes of the Williams Act might well be frustrated. As discussed *supra,* I conclude that the plaintiff is not entitled to equitable relief either under §13(d) or §14(e).

The plaintiff also asserts that the defendants have violated Section 10(b) and Rule 10b-5. 15 U.S.C. §78j(b); 17 C.F.R. §240.10b-5. Section 10(b) provides:

> It shall be unlawful for any person . . . [t]o use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

Rule 10b-5 is as follows:

> It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,
>
> (a) To employ any device, scheme, or artifice to defraud,
>
> (b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or
>
> (c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

Even assuming that the plaintiff's construction of §10 (b) is proper, i.e. that either the filing of a misleading 13D Schedule or the failure to timely file a 13D Schedule violates §10(b), as admitted by plaintiff in its brief there is serious question as to whether an issuer has standing to invoke §10(b) for injunctive relief, when it has neither purchased nor sold securities. The plaintiff cites Judge Friendly's comment in *General Time Corporation* v. *Talley Industries, Inc.,* 403 F.2d 159, 164 (2nd Cir. 1968): "we would not want to place our approval on a holding that under no circumstances can an issuer have standing to seek an injunction [under Section 10(b)]." Nonetheless, plaintiff has not cited any cases which would indicate that it does have standing under the circumstances of the instant case. In *Superintendent of Insurance* v. *Banker's Life & Casualty Co.,* 404 U.S. 6, 13n.10 (1971), the United States Supreme Court expressly refused to decide whether an issuer has standing under §10(b) where the corporation was not a seller or buyer.

I conclude that in the instant case, where management is clearly involved in a fight for control of the corporation, it is inappropriate to afford the corporation standing to sue under the rationale that it is desirable to provide a means, in addition to the Commission, to assure private enforcement of the Commission's rules and regulations, promulgated to protect the integrity of the marketplace and individual investors:

> It is generally inappropriate to impede a legitimate fight for the control of the management of a corporation. Where the corporation management faces a conflict of interest, and no direct connected interest of the corporation is to be vindicated by the suit, the protection of the objects of Rule 10b-5 through equitable intervention is better left to be administered by the federal administrative agency, the SEC, or other eligible complainants." *GAF* v. *Milstein,* 324 F. Supp. at 1072; *aff'd* 453 F.2d at 721.

Therefore, I conclude that the plaintiff does not have standing to assert the §10(b) claim.

I further conclude that this decision in favor of all the defendants renders the motion to dismiss filed by two of the defendants moot and that consequently said motion to dismiss must be denied.

Accordingly, on the basis of the entire record herein, It Is Hereby Ordered That the motion to dismiss is denied and that the motion for summary judgment in favor of all defendants is granted.

Entered this 13th day of February, 1973.

By The Court:
/s/ *James E. Doyle*
District Judge

APPENDIX B

In the
United States Court of Appeals
For the Seventh Circuit

No. 73-1277

Mosinee Paper Corporation, a Wisconsin Corporation,
Plaintiff-Appellant,

v.

Francis A. Rondeau, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the
Western District of Wisconsin.
No. 71 C 335
James E. Doyle, *Judge.*

Argued January 23, 1974 — Decided July 16, 1974

Before Swygert, *Chief Judge,* Pell, *Circuit Judge,* and Perry, *Senior District Judge.*[*]

Swygert, *Chief Judge.* Plaintiff Mosinee Paper Corporation appeals from the grant of summary judgment entered in favor of defendants Francis A. Rondeau and various persons and entities controlled by him.[1] In the district court Mosineee Paper charged that Rondeau had violated section 13(d) of the Securities and Exchange Act of 1934, 15 U.S.C. § 78m(d), known as the Williams Act.[2] Rondeau conceded the violation of section 13(d),

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[*] Senior District Judge Joseph Sam Perry of the Northern District of Illinois is sitting by designation.

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[1] These consist of corporations and business associations owned or operated by Rondeau: Mosinee Cold Storage, Inc.; Francis Rondeau, Incorporated; Wausau Cold Storage Company, Incorporated; Rondeau Foundation; Rondeau & Company; George Rondeau, First Wisconsin National Bank of Wausau; and First Wisconsin National Bank of Milwaukee. In addition, Rondeau's son, George Rondeau, is a defendant to the instant action.

[2] Section 13(d) reads as follows:

> (d)(1) Any person who, after acquiring directly or indirectly the beneficial ownership of any equity security of a class which is registered pursuant to section 12 of this title, or any equity security of an insurance company which would have been required to be sc registered except for the exemption contained in section 12(g)(2)(G) of this title, or any equity security issued by a closed-end investment company registered under the Investment Company Act of 1940, is directly or indirectly the beneficial owner of more than 5 per centum of such class shall, within ten days after such acquisition, send to the issuer of the security at its principal executive office, by registered or certified mail, send to each exchange where the security is traded, and file with the Commission, a statement containing such of the following information, and such additional information, as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors—
>
> (A) the background and identity of all persons by whom or on whose behalf the purchases have been or are to be effected;
>
> (B) the source and amount of the funds or other con-

(Footnote continued)

admitting that he had purchased eight percent of the issued and outstanding common stock of Mosinee Paper during a period of four months without timely filing a Schedule 13D as required by section 13(d).

(Footnote continued)

> sideration used or to be used in making the purchases, and if any part of the purchase price or proposed purchase price is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, or trading such security, a description of the transaction and the names of the parties thereto, except that where a source of funds is a loan made in the ordinary course of business by a bank, as defined in section 3(a)(6) of this title, if the person filing such statement so requests, the name of the bank shall not be made available to the public;
>
> (C) If the purpose of the purchases or prospective purchases is to acquire control of the business of the issuer of the securities, any plans or proposals which such persons may have to liquidate such issuer, to sell its assets to or merge it with any other persons, or to make any other major change in its business or corporate structure;
>
> (D) the number of shares of such security which are beneficially owned, and the number of shares concerning which there is a right to acquire, directly or indirectly, by (i) such person, and (ii) by each associate of such person, giving the name and address of each such associate; and
>
> (E) information as to any contracts, arrangements or understandings with any person with respect to any securities of the issuer, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guaranties of loans, guaranties against loss or guaranties of profits, division of losses or profits, or the giving or withholding of proxies, naming the persons with whom such contracts, arrangements, or under-

(Footnote continued)

Mosinee Paper is a Wisconsin corporation, mainly engaged in manufacturing and selling paper products. Its principal place of business is located at Mosinee, Wisconsin. The company's only class of equity security, registered pursuant to section 12 of the Securities and Exchange Act of 1934, 15 U.S.C. § 78l, is common stock, of which there were 806,177 shares outstanding as of August 31, 1971.

(Footnote continued)

standings have been entered into, and giving the details thereof.

(d)(2) If any material change occurs in the facts set forth in the statements to the issuer and the exchange, and in the statement filed with the Commission, an amendment shall be transmitted to the issuer and the exchange and shall be filed with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(d)(3) When two or more persons act as a partnership, limited partnership, syndicate, or other group for the purpose of acquiring, holding, or disposing of securities of an issuer, such syndicate or group shall be deemed a "person" for the purposes of this subsection.

(d)(4) In determining, for purposes of this subsection, any percentage of a class of any security, such class shall be deemed to consist of the amount of the outstanding securities of such class, exclusive of any securities of such class held by or for the account of the issuer or a subsidiary of the issuer.

(d)(5) The Commission, by rule or regulation or by order, may permit any person to file in lieu of the statement required by paragraph (1) of this subsection or the rules and regulations thereunder, a notice stating the name of such person, the number of shares of any equity securities subject to paragraph (1) which are owned by him, the date of their acquisition and such other information as the Commission may specify, if it appears

(Footnote continued)

Rondeau made his first purchase of Mosinee Paper stock on April 5, 1971. By May 17, 1971 he had acquired 40,309 shares, some in his own name and some in the names of his controlled corporations and other entities. This number was more than five percent of Mosinee Paper's common stock outstanding.

The Williams Act required him to file with the Securities and Exchange Commission and mail to Mosinee Paper a 13D schedule as of May 27, 1971. Rondeau failed to file

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(Footnote continued)

to the Commission that such securities were acquired by such person in the ordinary course of his business and were not acquired for the purpose of and do not have the effect of changing or influencing the control of the issuer nor in connection with or as a participant in any transaction having such purpose or effect.

(d)(6) The provisions of this subsection shall not apply to—

(A) any acquisition or offer to acquire securities made or proposed to be made by means of a registration statement under the Securities Act of 1933;

(B) any acquisition of the beneficial ownership of a security which, together with all other acquisitions by the same person of securities of the same class during the preceding twelve months, does not exceed 2 per centum of that class;

(C) any acquisition of any equity security by the issuer of such security;

(D) any acquisition or proposed acquisition of a security which the Commission, by rules or regulations or by order, shall exempt from the provisions of this subsection as not entered into for the purpose of, and not having the effect of, changing or influencing the control or the issuer or otherwise as not comprehended within the purposes of this subsection.

the schedule. He continued to acquire Mosinee Paper stock and by August 4, 1971 his acquisitions totaled 66,577 shares, about eight percent of Mosinee Paper's stock outstanding. On August 25, 1971 Rondeau filed a 13D schedule. An amended and supplemental schedule was filed on September 29, 1971.

In the district court, although admitting his violation of section 13(d), Rondeau contended that his failure to timely file a Schedule 13D stemmed from a lack of knowledge as to the existence of the reporting requirements of section 13(d) and not from any intention to avoid the disclosure requirements of the Act and thereby assist him in an effort to covertly gain control of Mosinee Paper. Rondeau argued that his violation of section 13(d) did not warrant the imposition of any remedy or equitable relief in view of the following circumstances: He unknowingly and unintentionally failed to file a Schedule 13D; his purchase of eight percent of the common stock was for investment purposes, not control; he did not formulate an intention to seek control of Mosinee Paper until after he was informed by his attorney in early August of the filing requirement under section 13(d); and he filed a Schedule 13D within a reasonable time after learning of his duty to file. The district court agreed with Rondeau's contention that despite his admitted violation of section 13(d) the grant of equitable relief was inappropriate under the circumstances. We take an opposite view.[3]

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[3] Mosinee Paper raises an additional issue challenging the adequacy of Rondeau's Schedule 13D disclosure. We find Rondeau's Schedule 13D as amended on September 29, 1971 to be legally sufficient and does not contain any material misstatement of facts. Accordingly, we hold plaintiff's challenge to the sufficiency of the disclosure to be without merit.

I

Rondeau claims that his failure to timely file Schedule 13D was a mere technical violation of the Act which was cured by the subsequent late filing in August of a Schedule 13D. He contends that the curative effect of the late filing derives from the fact that the overriding purpose of the Williams Act is to provide adequate notice and information to management and shareholders regarding an individual or group seeking control of a corporation prior to a tender offer or a proxy contest. Rondeau urges that the purpose of the Williams Act has not been violated by this allegedly "technical violation" in view of the circumstances that: (1) demonstrate that his purchase of eight percent of Mosinee Paper common stock was for investment purposes, not control, and subsequent to these purchases he was informed by his attorney of the Williams Act filing requirements whereupon he filed a Schedule 13D within a reasonable period of time; and (2) at no time prior or subsequent to filing the Schedule 13D had Rondeau engaged in a tender offer or proxy contest to attain control of Mosinee Paper. It is Rondeau's contention that, absent a showing of an intentional and knowing failure to file or an intent to secure control of the corporation, the failure to timely file a Schedule 13D, of itself, does not transgress the purpose of the Williams Act.

We do not agree with Rondeau's interpretation of the Williams Act for it tends to narrow and limit the Act well short of its intended reach. The legislative history of the Act indicates that it was "designed to require full and fair disclosure" to investors with respect to any "techniques for accumulating large blocks of equity securities of publicly held companies." 1968 U.S. Code Cong. & Admin. News, pp. 2813, 2814. Speaking directly to its intendment with regard to section 13(d) of the Act, Congress stated:

> The purpose of section 13(d) is to require disclosure of information by persons who have acquired a substantial interest, or increased their interest in the equity securities of a company by a substantial amount, within a relatively short period of time. 1968 U.S. Code Cong. & Admin. News, p. 2818.

We agree with the Second Circuit's analysis of the Act in *GAF Corp.* v. *Milstein,* 453 F.2d 709 (2d Cir. 1971), that "the purpose of section 13(d) is to alert the marketplace to every large, rapid aggregation or accumulation of securities, regardless of technique employed, which might represent a potential shift in corporate control. . . ." 453 F.2d at 717. To this observation we add what is self-evident from the language and legislative history of the Williams Act, the reporting requirements of section 13(d) apply regardless of the purchaser's purpose in acquiring the shares. The sweep of section 13(d) goes beyond the circumstances where the purchaser has formulated an intent to control, but also reaches that point when because of the size of the purchaser's holdings (having attained five percent beneficial ownership of a class of stock) and the fact that he acquired such holdings in a short amount of time, the purchaser portends the *potential* to effectuate a change in control. Under such conditions Congress has deemed it appropriate that investors and management be fully advised of this potential to effect control so that investors may evaluate and adequately assess the corporation's worth in view of the potential, while at the same time allowing management the opportunity to appropriately respond to any potential for a shift in control.[4]

Congress desired that investors and management be notified at the earliest possible moment of the potential for a shift in corporate control. To that end, acquisition of five percent of a class of stock was designated as a trigger to bring about full and fair disclosure. By failing to timely file, Rondeau effectively failed to disclose to investors and management the circumstances surrounding his potential to effect the control of Mosineee Paper while at the same time he continued to purchase securities in a market that had not been adequately apprised of such potential. Under the circumstances, Rondeau's failure to timely file was more than a mere technical violation of the Williams Act.

II

Rondeau contends that it would be improper to grant plaintiff's claim for equitable remedies in view that Mosinee Paper has suffered no harm, let alone irreparable harm by reason of his violation of section 13(d). In addition, Rondeau urges that granting the relief claimed by Mosinee Paper would run contrary to the design of the Williams Act to avoid "tipping the balance of regulation either in favor of management or in favor of the person making the takeover bid." 1968 U.S. Code Cong. & Admin. News, p. 2813.

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[4] It is clear from the language of the Act that Congress intended to include within the scope of the reporting requirements those transactions entered into for investment purposes and not control. The Commission has the discretionary power to exempt from the provisions of section 13(d) any acquisition of securities which the Commission deems "as not entered into for the purpose of, and not having the effect of, changing or influencing the control of the issuer . . . ." Section 13(d)(6)(D). In such a situation, in requesting the discretionary power of the Commission, the burden is on the acquirer of securities to establish through objective data that his acquisition is solely for investment purposes and does not possess the potential to influence the control of the issuer.

Addressing ourselves to Rondeau's first assertion, we are of the view that having transgressed the Williams Act, Rondeau has indeed harmed Mosinee Paper; that is, pursuant to section 13(d)(1) Mosinee Paper as issuer was entitled to receive a timely filed Schedule 13D. To the extent that the schedule was filed late, Mosinee Paper was harmed for it did not timely receive the relevant information surrounding Rondeau's potential to effect control and was delayed in its efforts to make any necessary response to that potential. Moreover, Mosinee Paper need not show irreparable harm as a prerequisite to obtaining permanent injunctive relief in view of the fact that as issuer of the securities it is in the best position to assure that the filing requirements of the Williams Act are being timely and fully complied with and to obtain speedy and forceful remedial action when necessary.[5]

We disagree with Rondeau's contention that a grant of relief to Mosinee Paper would tip the balance in favor of management thereby creating a weapon to be utilized by an alleged entrenched and inefficient management. The

plaintiff seeks in the instant action to vindicate its statutory right to full and timely disclosure of the circumstances surrounding the potential to effect a change of control in its ownership and operations. Moreover, as previously indicated, Mosinee Paper is in a superior position to safeguard the interests of the investing public to assure that the market is receiving adequate and timely disclosure of relevant information required to be reported by section 13(d). Accordingly, in view of the investing public's interest and the right vested in Mosinee Paper to timely disclosure, we do not perceive this as a case where the scales would be tipped in favor of management in the event equitable relief is granted to remedy a clear violation of the terms and purposes of the Act.

III

Having considered all the circumstances concerning Rondeau's violation of section 13(d)—giving effect especially to the district judge's findings that "Mr. Rondeau and the other defendants did not engage in intentional covert, and conspiratorial conduct in failing to timely file the 13D schedule" and was unaccompanied by a tender offer or proxy solicitation—we instruct the district court enter a decree enjoining Rondeau and his associates from further violations of section 13(d) and that the 26,268 shares, representing three percent of Mosinee Paper common stock purchased between the due date of the Schedule 13D and prior to its actual filing, not be permitted to be voted with respect to any takeover, proxy contest, or vote for officers and membership on the board of directors for a period of five years. We deem such an injunctive decree appropriate to neutralize Rondeau's violation of the Act and to deny him the benefit of his wrongdoing. *Bath Indus-*

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[5] The plaintiff's position as prime enforcer of the Act emanates from the fact that a corporation has a continuous and ongoing interest in the identity and composition of its ownership and has the necessary resources, financial and otherwise, to assure compliance with the Act and to seek remedial relief where the provisions of the Act have been violated.

tries, Inc. v. *Blot,* 427 F.2d 97, 113 (7th Cir. 1970); *Chris-Craft Industries, Inc.* v. *Bangor Punta Corp.,* CCH Fed. Sec. L. Rep. '72-'73 Decisions ¶ 93,816 at p. 93, 518 (2d Cir. 1973).

The summary judgment in favor of the defendants is reversed, and the cause is remanded for further proceedings consistent with this opinion. Costs on appeal are assessed against the defendants.

Pell, *Circuit Judge,* dissenting. The basic issue presented to this court on appeal is whether the district court erred in granting summary judgment to the defendants. The plaintiff, in the conclusion to its original brief, asserts that the "erratic, inconsistent responses to deposition questions both as between witnesses and by the same witness (Mr. Rondeau) renders it impossible to determine the facts and the appropriate scope of the relief to be granted without live testimony and cross-examination." The majority opinion finds in effect no necessity for any evidentiary hearing but, presumably taking the facts as found by the district court, it reverses that court and directs the entry on remand of a remedial injunction, which, because of the implicit acceptance of the district court's factual findings, can only have been based upon a highly technical violation of the Williams Act, one which I cannot conceive justifies the harsh injunctive penalty to be inflicted.

The Williams Act by its terms does not provide any penalties for its violation, nor does it mandate any civil remedy. While I would not gainsay that the courts may properly fashion a remedy for a violation of the Act, I do not conceive that Congress intended that the punishment should do otherwise than fit the crime. Therefore, assuming there was no genuine issue of material fact presented to the district court, a separate issue which does cause me concern, I am unable to concur in the result reach by the majority. Accordingly, I respectfully dissent.

The majority, by directing the entry of an injunction against the defendants, indicates that for the purpose of the disposition of this appeal it can be taken that there is no genuine issue of material fact requiring a further evidentiary hearing. Assuming that posture, at least *arguendo,* I therefore turn to the facts. These are adequately set forth in the detailed opinion of the district court and need not be repeated, except as pertinent, here. *Mosinee Paper Corporation* v. *Rondeau,* 354 F. Supp. 686 (W.D. Wis. 1973).

Upon completion of an analysis of those facts, and there is no question that the defendants technically violated the Act in that they did purchase more than 5% of plaintiff's outstanding common stock without filing the requisite Schedule 13D on a timely basis, I am left with the conviction that the majority decision stripped to its essentials is that the management interests of a corporation can cause the enjoining for a substantial period of time of a shareholder's ordinary rights in all stock purchased between the date the purchases exceed 5% and the date the 13D Schedule is filed, irrespective of motivation, irrespective of irreparable harm to the corporation, and irrespective of whether the purchases were detrimental to investors in the company's stock. The violation timewise is apparently all that is needed to trigger this result. I do not conceive that this was the purpose of the Act.

I agree with the statement in the majority opinion that the "reporting requirements of section 13(d) apply regardless of the purchaser's purpose in acquiring the shares." But the violation is conceded by all concerned. We are instead confronting the matter of remedy and indeed whether any remedy is appropriate or needed.

The plaintiff below apparently regarded issues as significant which the majority opinion finds are of no consequence. Thus, plaintiff contended that there was a genuine issue of material fact in dispute as to whether defendants' conduct (i.e., their motivation) was intentional, covert, and conspiratorial. 354 F. Supp. at 692. The majority opinion is willing to assume that it was not. The plaintiff alleged in its complaint and claims on appeal irreparable harm. 354 F. Supp. at 693. The majority opinion seems to find harm, although not categorizing it as irreparable, but states that in any event the plaintiff need not show irreparable harm as a prerequisite to obtaining permanent injunctive relief.

As I read the majority opinion, the rationale for this conclusion is along the line that the issuer of the stock is serving in the capacity of a private attorney general to assure that the filing requirements of the Act are met. I would not quarrel with the right to institute litigation for this purpose. "[T]he issuer has not only the resources, but the self-interest so vital to maintaining an injunctive action." *GAF Corporation* v. *Milstein,* 453 F.2d 709, 719 (2d Cir. 1971), *cert. denied,* 406 U.S. 910 (1972). In speaking of this, however, we are dealing with the matter of standing. In the present appeal, on the other hand, we are past that threshold issue and are concerned with the appropriateness of a remedy for a violation of the Act. Certainly here the standing was not being exercised for the purpose of securing the filing of the 13D Schedule. That schedule was filed on August 25, 1971, and the present action was not brought until September 2, 1971.

Before looking further at the facts, which apparently the majority accepted as they were found to be by the district court, it is well to recall that we are considering the propriety of the use of an equitable remedy, the injunction. In so doing we start with the cardinal principle that "[t]he basis of injunctive relief in the federal courts has always been irreparable harm and inadequacy of legal remedies." *Beacon Theatres* v. *Westover,* 359 U.S. 500, 506-7 (1959). (Footnote omitted.) I am unaware of any reason for lowering the standards in the use of the injunction and agree with Judge Doyle's observation of what the law is in this respect:

> "Although one court has stated in dicta that the absence of irreparable harm does not necessarily preclude injunctive relief where the public interest is involved . . . . , Sisak v. Wings & Wheels Express, Inc., 1971 CCH Fed. Sec. L. Rep. § 92, 991 at 90, 670 (S.D. N.Y. 1970), other courts have expressly stated that a finding of irreparable harm is a prerequisite to injunctive relief. *See* Ozark Air Lines, Inc. v. Cox, 326 F. Supp. 1113, 1118-1119 (E.D. Mo. 1971)." 354 F. Supp. at 694-5.

This court in *Bath Industries, Inc.* v. *Blot,* 427 F.2d 97, 113 (7th Cir. 1970), after carefully analyzing the facts before it, observed that "we cannot say that the court erred in finding that irreparable harm would be done to [the issuer] and its stockholders unless defendants were enjoined from now proceeding with their plan . . . ." I do not find the basis for such a statement as to irreparable harm in the present case, certainly not on the basis of the facts before the court in the summary judgment disposition. In *Bath,* as Judge Doyle demonstrates so clearly in distinguishing it, 354 F. Supp. at 695, "irreparable injury to the corporation, as distinguished from its present management, flowed from the covert conduct of the defendants, who secretly accumulated stock and solicited allies so that at the appropriate time they could confront management with a *fait accompli.*" (Emphasis in the original.)

Turning to the facts of the present case as contained in the district court's opinion, I note the following which I would deem to be of significance in determining the necessity of the injunctive relief directed by the majority opinion.

Francis Rondeau, who was the moving force of the defendants, determined in the early months of 1971 that plaintiff's stock would be a good investment because it was underpriced. He made his first purchase of 500 shares early in April of that year. The president and the board chairman of plaintiff both learned in the same month of several purchases by Rondeau. When the company records showed that the holdings of defendants, the associational identity of which was known to plaintiff, had reached 18,000 shares, plaintiff's president called Rondeau by telephone and inquired as to his purpose in purchasing the stock. Rondeau stated that he felt the stock was underpriced and was a good investment; that he intended to continue to purchase shares and might acquire up to 40,000 shares (under 5% of the outstanding stock); and that he was "perfectly happy with the operation."

Unless we draw an inference from the slim basis of the statement that he was going to buy less than 5% of the stock, an inference I do not deem this court on appeal may properly draw for purposes of fashioning a remedy, we would not be able to say that the record refutes the good faith of Rondeau's statement to the company president.

During 1971, a company which provided management, accounting, and investment services to the majority shareholders of plaintiff kept a cumulative total of acquisitions by Rondeau which were reported to the board chairman of the plaintiff. Rondeau did not know that he was required to file a Schedule 13D when his holdings exceeded 5% until he consulted his attorney on the matter about July 30, 1971, immediately after receiving a letter from the plaintiff's board chairman stating that Rondeau's activities in plaintiff's stock may have created problems under the federal securities laws.

Thereafter, Rondeau had his accountants work continuously to provide the information needed for the Schedule 13D. He placed no further orders for plaintiff's stock at any time after July 30, 1971. Rondeau had been advised in the past that he did not need to file anything with the SEC until his stock holdings in any one company exceeded 10%, and this indeed had been the law until December of 1970, when the Act was amended to lower the requirement from 10% to 5%. As a matter of fact, the plaintiff's board chairman was also unfamiliar with the requirement of the Williams Act until a few days before he wrote the letter to Rondeau on July 30, 1971.

Moreover, Rondeau's acquisitions were not secretive. It was common knowledge, "street talk" among brokers, bankers, and businessmen in the community, that Rondeau was purchasing plaintiff's stock in substantial quantities.

There was no concrete evidence in the record warranting a finding that Rondeau seriously considered obtaining control of plaintiff corporation prior to August 1971.

In the Schedule 13D filed August 25, 1971, it was indicated that defendants *at that time* were considering a tender offer. A few days after receipt of this schedule, plaintiff wrote to each of its shareholders and issued a press release calling attention to the statement that a tender offer was being considered by the Rondeau interests.

I cannot do otherwise than to agree with Judge Doyle on the basis of the facts as established by him, which are not disputed by the majority opinion, that there was no basis for a determination of irreparable injury to the plaintiff. To grant an injunction on the sole basis of a belated filing appears to me to be exalting form over substance, to be bringing an artificial and unduly restrictive sanction into the law of securities, and to be ignoring the real purpose of the Williams Act, which "was designed for the benefit of investors and not to tip the balance of regulation either in favor of management or in favor of the person seeking corporate control," *GAF Corporation, supra* at 717 n. 16, particularly in the situation when corporate control had not yet been an objective at the time of the unreported acquisitions. In sum, without irreparable harm being shown injunctive relief is not warranted.

The stultifying effect of too rigid an application of remedies in the present area is illuminatively set forth in Comment, *The Courts and the Williams Act: Try a Little Tenderness,* 48 N.Y.U.L. Rev. 991 (1973). The Comment is devoted to the impact of judicial decisions regarding the disclosure requirements on tender offers; its introductory observations are pertinent to our present question (at 991-92):

> "A cash tender offer is 'a publicly made invitation addressed to all shareholders of a corporation to tender their shares for sale at a specified price.' It is the only realistic means by which a person or group can acquire corporate control when opposed by hostile management. In the favorable economic and legal environment of the 1960's, the cash tender offer became a favorite tool of companies seeking diversification or profitable investments; the inevitable advent of federal regulation, in the form of the Williams Act disclosure requirements, did not dampen its dramatic growth. In 1973, however, courts began to show an increasing tendency to use disclosure requirements to halt and destroy contested cash tender offers—a tendency so pronounced that cash tender offers, at least when contested by incumbent management, may soon become extinct.
>
> "This imminent extinction is not deliberately contrived; it is the work of well-meaning courts which strive only to protect shareholders called upon to tender their securities. In protecting them, however, courts have demanded unrealistically high standards of disclosure about the offer. In shaping relief, moreover, courts have inadvertently failed to preserve the delicate balance necessary for the tender offer's survival. As a result, even if the violation is slight and easily cured, the offer almost always dies, never to be resurrected." (Footnotes omitted.)

In the present case, we have an even weaker situation than that contemplated in the Comment. Here, there had been acquisition of an amount of stock less than the amount originally required under the Act for reporting, one immeasurably removed from any realistic potential for control, and an acquisition found to be based solely on investment purposes. Section 13(d)(1)(C) requires the person filing to disclose any intention to acquire control. At the time the 5% was exceeded, there would have been nothing to report except the meagre facts of the acquisition and the source of the funds used.

Persons purchasing stock as an investment because it is underpriced rapidly lose interest when when the latter status disappears as it ordinarily does when a tender offer or proxy fight emerges. That the purpose of the Act was to protect the shareholders by affording them notice of the prospect of an artificially induced price resulting from a struggle for control rather than being directed at the mere investor is reflected in Section 13(d)(6)(D), which empowers the commission to exempt any acquisition or proposed acquisition "as not entered into for the purpose of, and not having the effect of, changing or influencing the control of the issuer or otherwise as not comprehended within the purpose of this subsection."

I am further concerned by the far reaching scope of the injunction directed to be entered by the majority opinion. The restriction against voting the 26,268 shares is not directed against Rondeau or his associates but is apparently to be applied on an *in rem* basis to the stock itself. Further this taint is to be for a period of five years without specification of the effective beginning date, which would mean that if it is to run for five years from the date of the entry of the injunction at least some of the normal perquisites of the shares would have been neutralized for a total of nearly eight years.

The discussion to this point has been predicated upon the facts as stated by Judge Doyle, as to which the majority opinion expressed no question of correctness. On that basis, I would dissent from the opinion for the reasons stated.

I nevertheless have a serious reservation as to the propriety of affirmance. The problem, not an uncommon one at the appellate level, is the propriety of the granting of summary judgment when one party vigorously argues the existence of a dispute as to issues of material fact. The problem is not made easier of solution by the use of findings in the district court opinion. This court has observed in other cases that the use of findings is "ill advised since

it would carry an unwarranted implication that a fact question was presented." *General Teamsters, Chauffeurs & Helpers Union* v. *Blue Cab Co.,* 353 F.2d 687, 689 (7th Cir. 1965). I am convinced, however, that the district court intended nothing more than to state what the uncontroverted facts were for decision.

A second aspect of the problem is that if the determination of the motion for summary judgment required the trial court to choose between conflicting possible inferences from the evidence, the motion should not have been granted. *Sarkes Tarzian Inc.* v. *United States,* 240 F.2d 467, 470 (7th Cir. 1957). Inferences, however, have to be drawn not from vaporous supposition but from facts established in the record. The parties had a full opportunity to develop that record, and the plaintiff deposed without success those who would have been able to have placed Rondeau in the position of covertly attempting to wrest control if such had been his intention at the time of acquisition.

While the question may be a close one, the well reasoned opinion of Judge Doyle, cast in the light of the purpose of the Act, persuades me that summary judgment was proper. While the standards of whether a summary judgment should be granted should not vary according to the type of the case, nevertheless, since "in too many situations, target management is pursuing its own interests to the exclusion of those of the investors," Comment, *The Courts and the Williams Act: Try a Little Tenderness, supra* at 1018, the investing public does have an interest in prompt disposition of the challenges arising in the factual situation here presented, an object lending itself to accomplishment by the summary judgment route.

That gamesmanship is becoming the order of the day in the area of acquisition-for-control of securities law is illustrated by a recent Second Circuit opinion, *Missouri Portland Cement Company* v. *Cargill, Incorporated,* .... F.2d ...., (Docket Nos. 74-1024 and 74-1025, June 10, 1974), in which Judge Friendly speaking for the court stated:

> "This appeal illustrates the growing practice of companies that have become the target of tender offers to seek shelter under § 7 of the Clayton Act, 15 U.S.C. §18. Drawing Excalibur from a scabbard where it would doubtless have remained sheathed in the face of a friendly offer, the target company typically hopes to obtain a temporary injunction which may frustrate the acquisition since the offering company may well decline the expensive gambit of a trial or, if it persists, the long lapse of time could so change conditions that the offer will fail even if, after a full trial and appeal, it should be determined that no antitrust violation has been shown. Such cases require a balancing of public and private interests of various sorts. Where, as here, the acquisition would be neither horizontal nor vertical, there are 'strong reasons for not making the prohibitions of section 7 so extensive as to damage seriously the market for capital assets, or so broad as to interfere materially with mergers that are pro-competitive in their facilitation of entry and expansion that would otherwise be subject to serious handicaps.' These reasons are especially compelling when the target company fails to show that the alleged antitrust violation would expose it to any readily identifiable harm." Slip opinion at 4050-51 (footnote omitted).

In connection with a claimed Williams Act violation, Judge Friendly observed:

> "Courts should tread lightly in imposing a duty of self-flagellation on officers with respect to matters that

> are known as well, or almost as well, to the target company; some issues concerning a contested tender offer can safely be left for the latter's riposte." Slip opinion at 4088 (footnote omitted).

Subsequent to oral argument in this cause, counsel brought to the attention of the court a per curiam order of the Eighth Circuit in *Tri-State Motor Transit Co.* v. *National City Lines,* No. 73-1867 (April 4, 1974). That court affirmed the district court's granting of a summary judgment motion to a defendant charged with a section 13(d) violation of failure to file, which motion was granted on the ground that the stipulated facts revealed no deliberate covert and conspiratorial noncompliance with the requirements of 13(d). In affirming, the court of appeals stated that injunctive relief was not warranted, citing Judge Doyle's opinion in the present case. Inasmuch as the Eighth Circuit order, although apparently a case of first impression on the present issue at the appellate level, was, under the rule of that circuit, an unpublished order not to be cited, and because of the lack of any factual development in the order, I have not relied upon the case as authority. I do note the case, however, because its disposition as contrasted with that in the majority opinion in the present case suggests the possibility of a split of authority between circuits.

For the reasons herein indicated, I would affirm the judgment of the district court.

A true Copy:
Teste:

....

Clerk of the United States Court of Appeals for the Seventh Circuit.

Supreme Court, U. S.
FILED
JAN 30 1975
MICHAEL RODAK, JR., CLERK

APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-415

FRANCIS A. RONDEAU, *Petitioner*

v.

MOSINEE PAPER CORPORATION, *Respondent*

**ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

PETITION FOR CERTIORARI FILED OCTOBER 12, 1974

CERTIORARI GRANTED DECEMBER 16, 1974

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Chronological List of Relevant Docket Entries

September 2, 1971—Filed plaintiff Mosinee Paper Corporation's complaint in United States District Court for the Western District of Wisconsin.

September 29, 1971—Filed motion to dismiss by Wausau and Milwaukee Banks.

October 5, 1971—Filed answer of defendants except defendant Banks.

December 27, 1971—Filed defendants' motion for summary judgment (with supporting affidavit).

January 17, 1972—Filed plaintiff's brief in opposition to defendants' motion for summary judgment, with supporting affidavit.

January 26, 1972—Filed affidavit of Francis A. Rondeau in support of motion for summary judgment.

February 13, 1973—Filed District Court's opinion and order denying motion to dismiss and granting the motion for summary judgment in favor of all defendants.

February 13, 1973—Filed District Court judgment.

February 22, 1973—Filed plaintiff's notice of appeal.

July 16, 1974—Entered final judgment of Court of Appeals for the Seventh Circuit reversing and remanding to District Court. Costs are assessed against the appellees.

July 16, 1974—Filed Circuit Court of Appeals opinion by Judge Swygert. (Judge Pell dissenting)

November 7, 1974—Mandate issued by Circuit Court of Appeals.

November 11, 1974—District Court received a certified copy of Circuit Court order reversing District Court's summary judgment and remanding for further proceedings.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

Civil Action File No. 71-C-335

Mosinee Paper Corporation, a Wisconsin corporation,
Plaintiff

v.

Francis A. Rondeau, Mosinee Cold Storage, Inc., a Wisconsin corporation, Francis Rondeau, Incorporated, a Wisconsin corporation, Wausau Cold Storage Company, Inc., a Wisconsin corporation, Rondeau Foundation, a Wisconsin non-stock, non-profit corporation, Rondeau Company, a Wisconsin limited partnership, George Rondeau, First Wisconsin National Bank of Wausau, a Wisconsin corporation, and First National Bank of Milwaukee, a Wisconsin corporation
Defendants.

Summons

To the above named Defendants:

You are hereby summoned and required to serve upon
Laurence C. Hammond, Jr.
of Quarles, Heriott, Clemons, Teschner & Noelke

plaintiff's attorney, whose address is
Laurence C. Hammond, Jr.
Quarles, Heriott, Clemons, Teschner & Noelke
780 North Water Street
Milwaukee, Wisconsin

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

/s/ Katharine L. Tolz
Katharine L. Toltz
Deputy Clerk

Date: September 2, 1971

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

[Caption Omitted]

Complaint

Mosinee Paper Corporation (hereinafter "Mosinee"), for its complaint against the defendants above named, alleges as follows:

Parties

(1) Mosinee is a Wisconsin corporation having its principal place of business at Mosinee, Wisconsin. It is principally engaged in the businesses of manufacturing, converting and selling specialty papers, paper products, and plastics. It consists of five operating centers: the Pulp and Paper Division at Mosinee, Wisconsin; the Bay West Paper Company Division, the Calwis Company Division and the Plastics Division, all in Green Bay, Wisconsin; and the Converted Products Division at Columbus, Wisconsin. Mosinee has been engaged at Mosinee, Wisconsin, in the manufacture of Kraft industrial and specialty papers since 1911. It has consistently been the principal employer at Mosinee, and also is a principal employer at Columbus, Wisconsin. Its only class of equity security outstanding and registered pursuant to Section 12 of the Securities Exchange Act of 1934 (15 U.S.C., Section 781) is common stock, of which there were 806,177 shares outstanding as of August 31, 1971.

(2) Defendant Francis A. Rondeau is an individual residing at Maple Ridge Road, Mosinee, Wisconsin. He is President and General Manager of defendant Mosinee Cold Storage, Inc.; President of defendant Wausau Cold Storage Company, Inc.; Vice President and a director of defendant First Wisconsin National Bank of Wausau; President and a director of defendant Francis Rondeau, Incorporated; President and a director of defendant Rondeau Foundation; and a limited partner of defendant Rondeau & Company.

(3) Defendant Mosinee Cold Storage, Inc. is a Wisconsin corporation having its principal place of business at Mosinee, Wisconsin. It is engaged in the business of cold storage of food commodities.

(4) Defendant Francis Rondeau, Incorporated is a Wisconsin corporation having its principal place of business at Mosinee, Wisconsin. It is engaged in the business of purchasing and processing natural cheese products.

(5) Defendant Wausau Cold Storage Company, Inc. is a Wisconsin corporation having its principal place of business at 832 Cleveland Avenue, Wausau, Wisconsin. It is engaged in the business of cold storage of food commodities.

(6) Defendant Rondeau Foundation is a Wisconsin nonstock, nonprofit corporation having its principal office at Mosinee, Wisconsin. It is a charitable corporation.

(7) Defendant Rondeau & Company is a Wisconsin limited partnership having its principal office and place of business at Mosinee, Wisconsin. It is composed of one general partner, defendant George Rondeau, and nine limited partners, including defendant Francis A. Rondeau. It owns real estate and securities.

(8) Defendant George Rondeau is an individual residing at 1004 Arnold Street, Rothschild, Wisconsin. He is Manager, Treasurer and director of defendant Wausau Cold Storage Company, Inc., and is the general partner of defendant Rondeau & Company.

(9) Defendant First Wisconsin National Bank of Wausau is a Wisconsin corporation having its principal place of business at 400 Scott Street, Wausau, Wisconsin.

(10) Defendant First Wisconsin National Bank of Milwaukee is a Wisconsin corporation having its principal place of business at 741 North Water Street, Milwaukee, Wisconsin.

JURISDICTION AND VENUE

(11) Jurisdiction and venue of this action are based on Section 27 of the Securities Exchange Act of 1934 (15 U.S.C. Section 78aa). Acts constituting the violations hereinafter alleged occurred in the Western Judicial District of Wisconsin, and defendants are found and do business there.

FIRST CLAIM

(12) Between late April and early June, 1971, it came to the attention of Mosinee management that defendant Francis A. Rondeau had acquired approximately 18,000 shares constituting approximately 2% of Mosinee's common stock outstanding. As a matter of stockholder relations, Mosinee's President, Clarence Scholtens, contacted Francis Rondeau. At that time Francis Rondeau told Mr. Scholtens that he was acquiring Mosinee stock for purposes of investment because he felt that the market price was reasonable, that he had no intention or desire to control or in any way affect the management of Mosinee's business, and that he expected to acquire up to about 40,000 shares.

(13) In late July, 1971, it appeared from the stock transfer records of Mosinee that Francis A. Rondeau and companies or entities which he probably controlled (his associates) then owned of record more than 40,309 shares of Mosinee common stock, constituting more than 5% of Mosinee's common stock outstanding. Mosinee is informed and believes that Francis A. Rondeau and his associates became the beneficial owners of more than 5% of Mosinee's common stock outstanding some time in June, 1971.

(14) Since April 1, 1971 or prior thereto, defendants MOSINEE COLD STORAGE, INC., FRANCIS RONDEAU, INCORPORATED, WAUSAU COLD STORAGE COMPANY, INC., RONDEAU FOUNDATION, RONDEAU & COMPANY, GEORGE RONDEAU, and, upon information and belief, other persons and entities whose identities are not known to Mosinee, have acted with Francis A. Rondeau as a syndicate or other group for the purpose of acquiring and holding Mosinee common stock, their objective being to take over and control Mosinee. Knowing that objective, defendants FIRST WISCONSIN NATIONAL BANK OF WAUSAU and FIRST WISCONSIN NATIONAL BANK OF MILWAUKEE aided and abetted the group's acquisitions of Mosinee common stock by financing its purchases thereof, all without securing or attempting to secure the group's compliance with provisions of the Securities Exchange Act of 1934 hereinafter alleged to have been violated.

(15) After acquiring the beneficial ownership of more than 5% of Mosinee common stock outstanding, defendants failed within ten days after such acquisition to send to Mosinee at its principal executive office and to file with the Securities and Exchange Commission a statement containing the information required by Section 13D, in violation of Section 13(d)(1) of the Securities Exchange Act of 1934 (15 U.S.C., Section 78m).

(16) Beginning on July 29, 1971, several attempts were made by Mosinee's Board Chairman, John E. Forester, to contact Francis Rondeau by telephone to arrange a meeting to ascertain his and his associates' identities and backgrounds, the sources and amounts of funds or other consideration used by them in acquiring Mosinee stock, their purposes, their interests in Mosinee stock, and other matters which defendants were required by Section 13(d)(1) to disclose to Mosinee so that it, in turn, could apprise Mosinee stockholders thereof. At first Mr. Forester received no response to calls left for Francis Rondeau. Thereafter, on July 30, 1971, Mr. Forester wrote a letter to Francis Rondeau, a copy of which is attached hereto as Exhibit A. On August 3, 1971, Mr. Rondeau called Mr. Forester by telephone and stated that he was not willing to meet with representatives of Mosinee unless his counsel was present, and that his counsel would not be available until August

9, 1971. A meeting, convenient to counsel for Mr. Rondeau, was scheduled for 1:00 P.M. on August 10, 1971, in Milwaukee, Wisconsin. On August 9, 1971, Mr. Rondeau's attorney, Lyman A. Precourt of Milwaukee, Wisconsin, called Mr. Forester, cancelled the meeting scheduled for August 10, 1971, and declined to schedule another meeting. In respect of that conversation, Mr. Forester wrote Francis Rondeau the letter dated August 9, 1971, a copy of which is attached hereto as Exhibit B. Shortly thereafter, Mosinee received the letter dated August 9, 1971, attached hereto as Exhibit C, from Mr. Rondeau's attorney to Mr. Forester.

(17) Defendants' failure to disclose to Mosinee and the Securities and Exchange Commission, and hence the shareholders and investing public generally, the information required by Schedule 13D was a device, scheme and artifice to defraud Mosinee and its stockholders, an omission to state material facts necessary in order to make statements made by Francis A. Rondeau not misleading, and a fraud and deceit upon Mosinee and its stockholders in connection with defendants' acquisition of Mosinee common stock, in violation of Sections 10(b) and 14(e) of the Securities Exchange Act of 1934 (15 U.S.C., Section 78j, 78n).

(18) Stockholders of Mosinee who sold shares without the information which defendants were required to disclose lacked information material to their decision whether to sell or hold. Mosinee was unable to communicate such information to its stockholders, and to take such actions as their interest required, including advising them that Francis Rondeau and his associates apparently have no experience whatsoever in the business of manufacturing and selling specialty papers, and it is believed that for them effectively to obtain control of Mosinee would have disastrous consequences for remaining Mosinee stockholders.

Second Claim

(19) On or about August 25, 1971, approximately 60 days after they became the beneficial owners of more than 5% of Mosinee's common stock outstanding, and after the prodding and exchanges described in paragraph 16, above, defendants mailed to Mosinee at its principal executive office the Schedule 13D, a copy of which is attached hereto as Exhibit D.

(20) The Schedule 13D belatedly filed by defendants is incomplete and misleading in the following respects:

(A) In stating the purposes of their acquisition (Schedule 13D, Item 4 at page 10), Mr. Rondeau and his associates state that their "investments as originally determined were and are not necessarily made with the objective" "to obtain effective control" of Mosinee. Mosinee is informed and believes that defendants' acquisitions of Mosinee stock were made with that objective.

(B) Schedule 13D requires disclosure of the source and amount of funds or other consideration used or to be used in making the purchases. Defendants' Schedule 13D (Item 3, page 9) discloses that $477,000 loaned to them by defendants First Wisconsin National Bank of Wausau and First Wisconsin National Bank of Milwaukee financed their purchases of Mosinee common stock, and that such loans have been repaid. Funds used to repay those loans were funds used in making the purchases, although the sources thereof are not disclosed.

(C) In Item 3 of their Schedule 13D (page 10), defendants state that they are considering investing approximately $3,600,000 of additional funds in common stock of Mosinee. The anticipated sources of $2,200,000 thereof are identified. The source of the balance of $1,400,000 is not identified, except to state that it will "be borrowed although no commitments for any such borrowings or loans have been entered into or have gone beyond the negotiation and discussion stage." Defendants are required by statute also to disclose the sources of such borrowings or loans being negotiated and discussed.

(D) Mosinee is informed and believes that individuals and entities whose identities and backgrounds are not disclosed by the Schedule 13D filed are acting as a group with defendants for the purpose of acquiring and holding common stock of Mosinee with the purpose of obtaining effective control of Mosinee.

(E) Item 5 at page 11 of the Schedule 13D indicates (i) that defendant Francis A. Rondeau owns of record and beneficially 45,911 shares, whereas Mosinee's stock transfer records indicate that he and his nominees own of record 50,361 shares; (ii) that defendant Mosinee Cold Storage, Inc. owns of record and beneficially 7,250 shares, whereas Mosinee's stock transfer records indicate that it owns of record 4,200 shares; (iii) that defendant Francis Rondeau, Incorporated owns of record and beneficially 7,800 shares, whereas Mosinee's stock transfer records indicate that it owns of record 5,500 shares; (iv) that defendant Wausau Cold Storage Company, Inc. owns of record and beneficially 1,800 shares, whereas Mosinee's stock transfer records indicate that it owns of record 2,300 shares; (v) that defendant Rondeau & Company owns of record and beneficially 3,300 shares, whereas Mosinee's stock transfer records indicate that it owns of record 2,620 shares.

(21) Defendants' incomplete and misleading Schedule 13D violates Section 13(d)(1). In violation of Sections 10(b) and 14(e) of the Securities Exchange Act of 1934 (15 U.S.C., Section 78j, 78n), it omits to state material facts necessary in order to make the statements made not misleading, and constitutes a fradulent and deceptive act in connection with the public cash tender offer to the shareholders of Mosinee which defendants state they are considering (Schedule 13D, Item 4 at page 10), and with respect to which Francis Rondeau publicly announced on August 31, 1971 that "a decision would be made this week on the tender price and the number of shares which he will seek to purchase."

(22) Mosinee and its stockholders and the investing public generally (insofar as they are potential purchasers of Mosinee stock) have been and continue to be irreparably injured by defendants' failure to file an accurate and complete Schedule 13D. Mosinee and its stockholders have been unable to ascertain with certainty the identity and background of all members of the group acting with defendants, and the amount and sources of their financing. Stockholders of Mosinee who may sell their stock to defendants or persons acting in concert with defendants lack knowledge material to their decision whether to buy, sell or hold. Defendants' statement that they are considering a public cash tender offer to the shareholders of Mosinee has disrupted Mosinee's relationships to its stockholders, employees, suppliers, customers and associates. Lacking full information concerning defendants, their financing and purposes, Mosinee is unable adequately to protect its stockholders against what management considers a serious threat to the conduct of the business of Mosinee.

Wherefore, plaintiff prays:

(1) That defendants and each of them, their agents, officers, directors, partners and all persons acting on their behalf or in concert with them, be enjoined from

(a) voting any common stock of Mosinee held or acquired in violation of the Securities Exchange Act of 1934;

(b) using such stock as collateral to secure funds, directly or indirectly, to exercise or acquire control of Mosinee;

(c) acquiring additional common stock of Mosinee; at least until such time as the effects of their violations of the Securities Exchange Act of 1934 have been fully dissipated.

(2) That defendants be required to divest themselves of all shares of common stock of Mosinee acquired by them in violation of the Securities Exchange Act of 1934.

(3) That plaintiff have judgment for such damages as it might have sustained as a result of defendants' violations of the Securities Exchange Act of 1934, when ascertained.

(4) That plaintiff have such other and further relief as may be appropriate.

(5) That plaintiff recover its costs, disbursements and attorneys' fees herein.

Laurence C. Hammond, Jr.
W. Stuart Parsons
Of Quarles, Heriott, Clemons,
Teschner & Noelke

By
Attorneys for Plaintiff

Of Counsel:

Quarles, Heriott, Clemons, Teschner & Noelke
780 North Water Street
Milwaukee, Wisconsin 53202
414-273-3700

Exhibit A

July 30, 1971

Mr. Francis A. Rondeau
Mosinee, Wisconsin

Dear Francis:

The stock transfer sheets for Mosinee Paper Corporation indicate that you have a substantial stock interest in the Company at this time and considerably more shares than Chum understood to be your objective. I discussed the matter with Chum, who is in Boston, yesterday, and he suggested that I set up a meeting with you as soon as he returns. Chum is expected in Mosinee late Tuesday night and would be available for a meeting any time Wednesday morning or early afternoon.

Your activity in the Company's stock has given rise to numerous rumors, some of which have been circulating in the mill. In the interest of the welfare of the Company we would hope that these rumors could be put to rest.

Your activity in the stock seems to have created some problems under the Federal Securities Laws for both you and the Company and these, too, might be discussed.

We feel that a meeting might better be held at some place other than the mill or your office and I would suggest that we meet in our offices on the sixth floor of the First American National Bank Building.

I shall call you on Monday to see if the suggested time and place for a meeting fit in with your plans and will then firm it up with Chum who will be traveling back to Mosinee.

Yours most sincerely,

JEF/gh

Exhibit B

August 9, 1971

Mr. Francis A. Rondeau
Mosinee, Wisconsin

Dear Francis:

Your attorney, Lyman Precourt, called today and asked that the meeting which we had agreed upon be cancelled. You remember that we initially sought to talk with you during the week of August 2nd and you asked that a meeting be delayed until your attorney returned.

While we were willing to postpone the meeting as a courtesy to you and your attorney, we would appreciate your rescheduling it within the next week. We certainly have no desires to inconvenience you, but in the interest of the Company's welfare, we are anxious to quiet the many rumors which have been circulating in the mill and among our customers.

If you find that you are unable to arrange such a meeting, please let us know so that we may consider the alternatives available to us and take appropriate action.

Yours most sincerely,

JEF/gh
cc—Lyman Precourt, Esq.
Foley & Lardner
732 North Water Street
Milwaukee, Wisconsin

Exhibit C

FOLEY & LARDNER
735 NORTH WATER STREET
MILWAUKEE 53202
TELEPHONE (414) 273-0800
AUGUST 9, 1971
WASHINGTON OFFICE
815 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20006
TELEPHONE (202) 223-4771

Mr. John E. Forester
Chairman of the Board
Mosinee Paper Corporation
P.O. Box 65
Wausau, Wisconsin 54401

Dear Mr. Forester:

This will confirm my telephone conversation with you today in which I advised that we had been retained by Mr. Francis A. Rondeau in connection with his stock interests in Mosinee Paper Corporation. We have reviewed your letter to Mr. Rondeau of July 30, 1971, requesting a meeting and suggesting that Mr. Rondeau's acquisition of stock of Mosinee Paper Corporation may have created some problems under the Federal Securities Law for the company and him. I have just returned from vacation and am in the process of ascertaining the pertinent facts and will then again be in touch with you with respect to a meeting.

I have noted your request that this meeting be held this week and will try to comply therewith although I cannot be certain that I will have sufficient information on such short notice. I will, however, do my best to see that this matter is attended to as promptly as possible.

Very truly yours,
FOLEY & LARDNER
By /s/ Lyman A. Precourt
LYMAN A. PRECOURT

cc: Mr. Francis A. Rondeau

Exhibit D (Transmittal)

FOLEY & LARDNER
735 NORTH WATER STREET
MILWAUKEE 53202
TELEPHONE (414) 273-0800

AUGUST 25, 1971

WASHINGTON OFFICE
815 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20006
TELEPHONE (202) 223-4771

August 25, 1971

REGISTERED MAIL

Mr. John E. Forester
Chairman of the Board
Mosinee Paper Corporation
P.O. Box 65
Wausau, Wisconsin 54401

Dear Mr. Forester:

On behalf of our client, Francis A. Rondeau, enclosed please find a copy of Schedule 13D which we are mailing to the Securities and Exchange Commission today.

Very truly yours,

Foley & Lardner
By /s/ Phillip J. Hanrahan
Phillip J. Hanrahan

Enclosure

cc: Mr. Francis A. Rondeau

Exhibit D

MOSINEE PAPER CORPORATION

STATEMENT FILED PURSUANT TO SECTION 13(d) OF THE SECURITIES EXCHANGE ACT OF 1934

SCHEDULE 13D

Item 1. *Security and Issuer.*

Common Stock, $5.00 par value, Mosinee Paper Corporation (Issuer), Mosinee, Wisconsin 54455.

Item 2. *Identity and Background.*

I. (a) Francis A. Rondeau
P.O. Box 10
Mosinee, Wisconsin 54455

(b) Maple Ridge Road
Mosinee, Wisconsin 54455

(c) President and General Manager of Mosinee Cold Storage, Inc., P.O. Box 10, Mosinee, Wisconsin 54455

Cold storage and food commodities.

(d) (i) President

Wausau Cold Storage Company, Inc.
832 Cleveland Avenue
Wausau, Wisconsin 54401

Cold storage of food commodities

Prior to 1961 to date

(ii) Vice President and Director
First Wisconsin National Bank of Wausau
400 Scott Street
Wausau, Wisconsin 54401

General Banking

1963 to date

(iii) President and Director
Francis Rondeau, Incorporated
P.O. Box 10
Mosinee, Wisconsin 54455

Packaging and processing of natural cheese products

Prior to 1961 to date

(e) Francis A. Rondeau has not, during the past ten years, been convicted in any criminal proceeding.

II. (a) Mosinee Cold Storage, Inc.
P.O. Box 10
Mosinee, Wisconsin 54455

(b) Not applicable

(c) Cold storage of food commodities.

(d) Not applicable

(e) Mosinee Cold Storage, Inc. has not, during the past ten years, been convicted in any criminal proceeding.

Information called for by Item 2 with respect to the officers and directors of Mosinee Cold Storage, Inc. is as follows:

(a)-(e) Francis A. Rondeau, President and Director (The information concerning Francis A. Rondeau contained in I (a)-(e) above is incorporated by reference herein as if fully set forth herein).

(a) Homer Ayvazzadeh
P.O. Box 10
Mosinee, Wisconsin 54455

(b) 1010 Maple Street
Wausau, Wisconsin 54401

(c) Secretary and Director and head of quality control of Mosinee Cold Storage, Inc., P.O. Box 10, Mosinee, Wisconsin 54455 (cold storage of food commodities); Vice-President, Secretary, Director and head of quality control of Francis Rondeau, Incorporated, P.O. Box 10, Mosinee, Wisconsin 54455 (packaging and processing of natural cheese products).

(d) (i) Chemical Engineer
Armour & Company
St. Paul, Minnesota
1962-1964

Meat packer and processor

(ii) Secretary and Director and head of quality control

Mosinee Cold Storage, Inc.
P.O. Box 10
Mosinee, Wisconsin 54455

1964 to date

Cold storage of food commodities

(iii) Vice President, Secretary, Director and head of quality control, Francis Rondeau, Incorporated, P.O. Box 10, Mosinee, Wisconsin 54455

1964 to date

Packaging and processing of natural cheese products

(a) Marie Rondeau (wife of Francis A. Rondeau)
P.O. Box 10
Mosinee, Wisconsin 54455

(b) Maple Ridge Road
Mosinee, Wisconsin 54455

(c) Principal occupation is housewife, but also serves as (i) Treasurer and Director of Mosinee Cold Storage, Inc., P.O. Box 10, Mosinee, Wisconsin 54455 (cold storage of food commodities), (ii) Treasurer and Director of Francis Rondeau, Incorporated, P.O. Box 10, Mosinee, Wisconsin 54455 (packaging and processing of natural cheese products), and (iii) Secretary and Director of Wausau Cold Storage Company, Inc., 832 Cleveland Avenue, Wausau, Wisconsin 54401 (cold storage of food commodities).

(d) (i) 1961-date—housewife

(ii) 1961-date—Treasurer and Director of Mosinee Cold Storage, Inc., P.O. Box 10, Mosinee, Wisconsin 54455 (cold storage of food commodities)

(iii) 1961-date—Treasurer and Director of Francis Rondeau, Incorporated, P.O. Box 10, Mosinee, Wisconsin 54455 (packaging and processing of natural cheese products)

(iv) 1961-date—Secretary and Director, Wausau Cold Storage Company, Inc., 832 Cleveland Avenue, Wausau, Wisconsin 54401 (cold storage of food commodities)

(e) Mrs. Rondeau has not, during the past ten years, been convicted in any criminal proceeding.

III. (a) Francis Rondeau, Incorporated
P.O. Box 10
Mosinee, Wisconsin 54455

(b) Not applicable

(c) Purchasing and processing of natural cheese products

(d) Not applicable

(e) Francis Rondeau, Incorporated has not, during the past ten years, been convicted in any criminal proceeding.

Information called for by Item 2 with respect to the officers and directors of Francis Rondeau, Incorporated is as follows:

(a)-(e) Francis A. Rondeau, President and Director (The information concerning Francis A. Rondeau contained in I (a)-(e) above is incorporated by reference herein as if fully set forth herein).

(a)-(e) Homer Ayvazzadeh, Vice President, Secretary and Director (The information concerning Homer Ayvazzadeh contained in II (a)-(e) above is incorporated by reference herein as if fully set forth herein).

(a)-(e) Marie Rondeau, Treasurer and Director (The information concerning Marie Rondeau contained in II (a)-(e) above is incorporated by reference herein as if fully set forth herein).

IV. (a) Wausau Cold Storage Company, Inc.
832 Cleveland Avenue
Wausau, Wisconsin 54401

(b) Not applicable

(c) Cold storage of food commodities

(d) Not applicable

(e) Wausau Cold Storage Company, Inc. has not, during the past ten years, been convicted in any criminal proceeding.

Information called for by Item 2 with respect to the officers and directors of Wausau Cold Storage Company, Inc. is as follows:

(a)-(e) Francis A. Rondeau, Chairman of the Board, President and Director (The information concerning Francis A. Rondeau contained in I (a)-(e) above is incorporated by reference herein as if fully set forth herein).

(a)-(e) Marie Rondeau, Secretary and Director (The information concerning Marie Rondeau contained in II (a)-(e) above is incorporated by reference herein as if fully set forth herein).

(a) George Rondeau
832 Cleveland Avenue
Wausau, Wisconsin 54401

(b) 1004 Arnold Street
Rothschild, Wisconsin 54474

(c) Manager, Treasurer and Director of Wausau Cold Storage Company, Inc., 832 Cleveland Avenue, Wausau, Wisconsin 54401

Cold storage of food commodities

(d) (i) 1961-1965, Student, Spencerian College, Milwaukee, Wisconsin

(ii) 1965-April, 1967, Sales Representative, Folgers Coffee Co., Kansas City, Missouri, coffee producers

(iii) April, 1967-date, Manager, Treasurer and Director, Wausau Cold Storage Company, Inc., 832 Cleveland Avenue, Wausau, Wisconsin 54401

Cold storage of food commodities

(e) George Rondeau has not, during the past ten years, been convicted in any criminal proceeding.

V. (a) Rondeau Foundation
P.O. Box 10
Mosinee, Wisconsin 54455

(b) Not applicable

(c) Charitable corporation

(d) Not applicable

(e) Rondeau Foundation has not, during the past ten years, been convicted in any criminal proceeding.

Rondeau Foundation is a Wisconsin non-profit charitable corporation organized in 1956. Information with respect to the officers and directors of the Rondeau Foundation is as follows:

(a)-(e) Francis A. Rondeau, President and Director (The information concerning Francis A. Rondeau contained in I (a)-(e) above is incorporated by reference herein as if fully set forth herein).

(a)-(e) Marie Rondeau, Secretary and Director (The information concerning Marie Rondeau contained in II (a)-(e) above is incorporated by reference herein as if fully set forth herein).

(a)-(e) George Rondeau, Treasurer and Director (The information concerning George Rondeau contained in IV (a)-(e) above is incorporated by reference herein as if fully set forth herein).

VI. (a) Rondeau & Company
P.O. Box 10
Mosinee, Wisconsin 54455

(b) Not applicable

(c) Rondeau & Company is a limited partnership composed of one general partner and 9 limited partners. It owns real estate and securities.

(d) Not applicable

(e) Rondeau & Company has not, during the past ten years, been convicted in any criminal proceeding.

Information with respect to the general and limited partners of Rondeau & Company is as follows:

(a)-(e) George Rondeau, General Partner (The information concerning George Rondeau contained in IV (a)-(e) above is incorporated by reference herein as if fully set forth herein).

(a)-(e) Francis A. Rondeau, Limited Partner (The information concerning Francis A. Rondeau contained in I (a)-(e) above is incorporated by reference herein as if fully set forth herein).

(a)-(e) Marie Rondeau, Limited Partner (The information concerning Marie Rondeau contained in II (a)-(e) above is incorporated by reference herein as if fully set forth herein).

(a)-(e) Homer Ayvazzadeh, Limited Partner (The information concerning Homer Ayvazzadeh contained in II (a)-(e) above is incorporated by reference herein as if fully set forth herein).

(a) John Rondeau (Limited Partner)
P.O. Box 10
Mosinee, Wisconsin 54455

(b) Half Moon Lake
Mosinee, Wisconsin 54455

(c) Production Manager, Francis Rondeau, Incorporated, P.O. Box 10, Mosinee, Wisconsin 54455

Packaging and processing of natural cheese products

(d) 1962-1966, Student, St. Norbert's College, Green Bay, Wisconsin

1966-1968, Sales Representative, Shell Oil Company, Des Moines, Iowa

1968 to date, production manager, Francis Rondeau, Incorporated, P.O. Box 10, Mosinee, Wisconsin 54455

(e) John Rondeau has not, during the past ten years, been convicted in any criminal proceeding.

(a) Frank Rondeau (Limited Partner)
704 Kinglet Avenue
Wausau, Wisconsin 54401

(b) 704 Kinglet Avenue
Wausau, Wisconsin 54401

(c) Sales Representative, Hallmark Greeting Card Company, Kansas City, Missouri

Greeting cards

(d) 1965-1969, Student, Spencerian College, Milwaukee, Wisconsin

1969 to date, Sales Representative, Hallmark Greeting Card Company, Kansas City, Missouri

Greeting cards

(e) Frank Rondeau has not, during the past ten years, been convicted in any criminal proceeding.

(a) Earl Rondeau (Limited Partner)
Maple Ridge Road
Mosinee, Wisconsin 54455

(b) Maple Ridge Road
Mosinee, Wisconsin 54455

(c) Student, Mosinee High School, Mosinee, Wisconsin

(d) None

(e) Earl Rondeau has not, during the past ten years, been convicted in any criminal proceeding.

(a) Carol Rondeau Ayvazzadeh (Limited Partner)
1010 Maple Street
Wausau, Wisconsin 54401

(b) 1010 Maple Street
Wausau, Wisconsin 54401

(c) Housewife

(d) Housewife for over past ten years.

(e) Carol Rondeau Ayvazzadeh has not, during the past ten years, been convicted in any criminal proceeding.

(a) Paul Rondeau (Limited Partner)
c/o Rubuen Cocoa Restaurant
Phoenix, Arizona

(b) Apartment #227
Canlan Apartments
5145 North 7th Street
Phoenix, Arizona 85014

(c) Assistant Manager, Rubuen Cocoa Restaurant, Phoenix, Arizona

Restaurant

(d) (i) September 1967—January 1971, Student, St. Norbert's College, Green Bay, Wisconsin

(ii) January 1971 to date—Assistant Manager, Rubuen Cocoa Restaurant, Phoenix, Arizona

Restaurant

(e) Paul Rondeau has not, during the past ten years, been convicted in any criminal proceeding.

(a) Rosylind Rondeau (Limited Partner)
18410 Jamaica Avenue
Hollis, New York 11423

(b) Apartment #2D
433 East 83rd Street
New York, New York 10028

(c) Designer, Ideal Toy Company, 18410 Jamaica Avenue, Hollis, New York 11423

Toy manufacturer

(d) (i) 1961-1963, Designer, Hallmark Greeting Card Company, Kansas City, Missouri

Greeting cards

(ii) 1963-1965, Designer, Playskool Toy Company, Chicago, Illinois

Toy manufacturer

(iii) 1965-1967, Designer Tootsie Toy Division of Strombecker Corporation, Chicago, Illinois

Toy manufacturer

(iv) 1968, Designer, Sylvestries, Chicago, Illinois Commercial Designers and Decorators

(v) 1969 to date, Designer, Ideal Toy Company, 18410 Jamaica Avenue, Hollis, New York 11423

Toy manufacturer

(e) Rosylind Rondeau has not, during the past ten years, been convicted in any criminal proceeding.

NOTE: Francis A. Rondeau, through stock ownership, corporate offices, and family relationships, controls Mosinee Cold Storage, Inc., Wausau Cold Storage Company, Inc. and Francis Rondeau, Incorporated. In addition, he also controls the Rondeau Foundation and Rondeau & Company. Information with respect to Francis A. Rondeau as required by Items (a)-(e) of Item 2 of this Schedule 13D is set forth in I (a)-(e) above and is incorporated herein by reference as if fully set forth herein.

Item 3. *Source and Amount of Funds or Other Consideration.*

All purchases of the Issuer's common stock made to date have been financed as follows:

1. Approximately $598,000 from Francis A. Rondeau of which approximately $300,000 came from Mr. Rondeau's own funds and the remainder borrowed from Rondeau & Company on open account.

2. Mosinee Cold Storage, Inc. borrowed $30,000 from the First Wisconsin National Bank of Wausau on a 90-day note at 5¼% secured by certain securities owned by it and related companies named herein. This loan has been repaid.

3. Francis Rondeau, Incorporated borrowed $100,000 from the First Wisconsin National Bank of Wausau on a 90-day note at 5¼% secured by certain securities owned by it and related companies named herein. This loan has been repaid.

4. Rondeau & Company borrowed $307,000 from the First Wisconsin National Bank of Milwaukee at an annual interest rate of 6% secured by certain securities owned by it and related companies named herein. This loan has been repaid.

NOTE: Of the funds identified in 1 to 4 above, approximately $865,000 was utilized to purchase common stock of the Issuer and the balance used to make purchases of securities of other corporations.

Francis A. Rondeau and one or more of his controlled corporations and other entities presently are considering investing approximately $3,600,000 of additional funds in the common stock of the Issuer. These funds are expected to be obtained as follows:

(a) $1,200,000 to be invested by Mosinee Cold Storage, Inc., out of proceeds to be received from the sale of real property located in Marathon County, Wisconsin; such transaction is expected to close within the next 12 months;

(b) Francis A. Rondeau and his associates propose to sell approximately $1,000,000 of marketable securities to provide additional funds for investment in common stock of the Issuer;

(c) The balance of the monies, if invested, will be borrowed although no commitments for any such borrowings or loans have been entered into or have gone beyond the negotiation and discussion stage.

Item 4. *Purpose of Transaction.*

Francis A. Rondeau determined during early part of 1971 that the common stock of the Issuer was undervalued in the over-the-counter market and represented a good investment vehicle for future income and appreciation. Francis A. Rondeau and his associates presently propose to seek to acquire additional common stock of the Issuer in order to obtain effective control of the Issuer, but such investments as originally determined were and are not necessarily made with this objective in mind. Consideration is currently being given to making a public cash tender offer to the shareholders of the Issuer at a price which will reflect current quoted prices for such stock with some premium added. In the event control of the business of the Issuer is obtained, Francis A. Rondeau and his associates have no intention to liquidate the business of the Issuer, sell its assets, merge it with any other group or entity, or make any other major change in its business or corporate structure except with respect to consideration being given to management changes in an effort to provide a Board of Directors which is more representative of all of the shareholders, particularly those outside of present management, in order to improve such management with the intent of attempting to better assure the stockholders' equity growth and payment of increased dividends, if possible.

All such purchases were effected through registered broker-dealers in the over-the-counter market at prevailing prices and were made over a period of time from April 5, 1971 through August 4, 1971.

Item 5. *Interest in Securities of the Issuer.*

	No. of Shares Owned of Record and Benefically
Francis A. Rondeau (individually and as agent for companies listed below)	45,911
Associates:	
Mosinee Cold Storage, Inc. P.O. Box 10 Mosinee, Wisconsin 54455	7,250
Francis Rondeau, Incorporated P.O. Box 10 Mosinee, Wisconsin 54455	7,800
Wausau Cold Storage Company, Inc. 832 Cleveland Avenue Wausau, Wisconsin 54401	1,800
Rondeau Foundation P.O. Box 10 Mosinee, Wisconsin 54455	516
Rondeau & Company P.O. Box 10 Mosinee, Wisconsin 54455	3,300
Total	66,577

Within the past 60 days, Francis A. Rondeau has purchased 10,974 shares of the Issuer and his associate, Rondeau & Company, has purchased 1,000 shares. Neither Francis A. Rondeau nor any of his associates named above have any right to acquire, directly or indirectly, any additional shares.

Item 6. *Contracts, Arrangements, or Understandings With Respect to Securities of the Issuer.*

None

Item 7. *Persons Retained, Employed or to be Compensated.*

Not applicable

Item 8. *Material to be Filed as Exhibits.*

Not applicable

I certify that to the best of my knowledge and belief, the information set forth in this statement is true, complete and correct.

August 25, 1971

/s/ Francis A. Rondeau
Francis A. Rondeau

MOSINEE COLD SORAGE, INC.
By /s/ Francis A. Rondeau
Francis A. Rondeau

FRANCIS RONDEAU, INCORPORATED
By /s/ Francis A. Rondeau
Francis A. Rondeau

WAUSAU COLD STORAGE COMPANY, INC.
By /s/ Francis A. Rondeau
Francis A. Rondeau

RONDEAU FOUNDATION
By /s/ Francis A. Rondeau
Francis A. Rondeau

RONDEAU & COMPANY
By /s/ Francis A. Rondeau
Francis A. Rondeau

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

[Caption Omitted]

File No. 71-C-335

Answer

Now come the defendants, Francis A. Rondeau, Mosinee Cold Storage, Inc., Francis Rondeau, Incorporated, Wausau Cold Storage Company, Inc., Rondeau Foundation, Rondeau & Company, and George Rondeau (hereinafter "defendants"), by their attorneys, David E. Beckwith and James O. Huber, and for their answer to the plaintiff's complaint, allege and show to the Court as follows:

1. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1, except matters of public record, and thereby put plaintiff to its proof thereon.

2. Admit the allegations of paragraphs 2, 3, 4, 5, 6, 7 and 8.

3. Admit the allegations of paragraphs 9 and 10, except that said defendants are national banking associations organized under and by virtue of the laws of the United States of America.

4. As to the allegations of paragraph 11, deny that plaintiff has pleaded a claim for relief under the Securities and Exchange Act of 1934, or any other federal act, and further deny that any alleged acts of these defendants constitute violations thereof.

5. Admit the allegations of paragraph 12 except those which relate to the alleged discussion as to Francis Rondeau's intention or desire to control or in any way affect the management of Mosinee's business, allege in this respect that no such discussions took place at said time.

6. As to the allegations of paragraph 13, admit that Francis A. Rondeau and his associates own of record more than 5% of Mosinee's common stock outstanding, alleging in his respect that said defendants became the owners thereof in May, 1971; defendants further allege in this respect that such ownership appeared and was reflected on the stock transfer records of Mosinee earlier than late July, 1971.

7. Deny the allegations of paragraph 14.

8. As to the allegations of paragraph 15, admit that defendants failed within ten days after acquiring 5% of Mosinee common stock to prepare and file the statement required by Section 13(d)(1) of the Securities and Exchange Act of 1934, alleging in this respect that said defendants had no knowledge that their purchases of Mosinee common stock were of sufficient magnitude to require any such filing; allege that the defendant, Francis A. Rondeau, was advised by a person or persons who purported to be familiar with securities law and regulations that no SEC filing was required until he and his associates had acquired 10% of the outstanding common stock of a corporation; further allege that upon being advised in the last days of July or early August, 1971, for the first time of the requirement for filing a Schedule 13D under Section 13(d)(1) of the Securities and Exchange Act of 1934, defendants did in fact promptly prepare and file a Schedule 13D with the Securities and Exchange Commission and sent a copy thereof to Mosinee at its principal executive offices.

9. As to the allegations of paragraph 16, deny having knowledge or information sufficient to form a belief as to what attempts, if any, were made by Mosinee's Board Chairman to contact Francis A. Rondeau, by telephone or otherwise, to arrange a meeting and/or the purpose of any such meeting, and further deny that Mr. Forester received no response to calls allegedly left for Mr. Rondeau; admit the remaining allegations of paragraph 16.

10. Deny the allegations of paragraph 17.

11. Deny the allegations of paragraph 18, and allege in this respect that the officers and directors of Mosinee were fully aware from the stock transfer records of Mosinee and from other sources of information, including Mr. Rondeau, that Francis A. Rondeau and his associates were, in the spring of 1971, purchasing substantial amounts of Mosinee common stock, and further believed or suspected that it was or could be the purpose of Francis A. Rondeau and his associates to purchase sufficient amounts of the common stock of Mosinee so that they could obtain effective control of Mosinee or so that they would be in a position to tender for additional Mosinee common stock or solicit proxies to vote the common stock of Mosinee to obtain control of Mosinee; plaintiff and its officers and directors could have informed the shareholders of defendants' purchases of Mosinee common stock and their suspicions respecting Mr. Rondeau's purposes had they seen fit to do so, but instead said officers undertook to purchase large quantities of the common stock of Mosinee before communicating with Mosinee stockholders.

12. As to the allegations of paragraph 19, admit that defendant, Francis A. Rondeau, mailed to Mosinee on or about August 25, 1971 the Schedule 13D; deny any implication that said Schedule was submitted by reason of the alleged prodding and/or exchanges alleged in paragraph 16 of plaintiff's complaint, realleging in this respect the allegations of paragraph 8 above.

13. As to the allegations of paragraph 20, deny that said Schedule 13D is incomplete and/or misleading in any manner affecting plaintiff.

Specifically, as to the allegations of paragraph 20(A), allege that said Schedule 13D speaks for itself; deny defendants acquired the Mosinee stock for any purpose other than stated in said Schedule 13D.

As to the allegations of paragraph 20(B), deny the allegations of the last sentence thereof.

As to the allegations of paragraph 20(C), deny the allegations of the last sentence thereof.

Deny the allegations of paragraph 20(D).

As to the allegations of paragraph 20(E), admit that at the time of the original filing of the Schedule 13D, all of the stock allocations and/or sources of funds for the purchase thereof between Francis A. Rondeau and his affiliates had not been determined, and allege further in this respect that the final allocations are as follows:

	Number of Shares of Record and Beneficially
Francis A. Rondeau	34,679
Mosinee Cold Storage, Inc.	11,020
Francis Rondeau, Incorporated	7,060
Wausau Cold Storage Company, Inc.	3,600
Rondeau Foundation	1,957
Rondeau & Company	4,600
Ronco	264
Mosinee Cold Storage, Inc. Wausau Cold Storage Company, Inc., and Francis Rondeau, Incorporated, as participating Employees in the Emjay Corporation Master Profit Sharing Plan dated October 14, 1968	3,397
	66,577

Defendants further point out in this respect that the minor discrepancies in said allocations are of no consequence to plaintiff alleging in this respect that the total 66,577 shares properly was represented in the original Schedule 13D and that the revised allocations thereof will be properly set forth in an amendment to, or supplement of their Schedule 13D.

14. Deny the allegations of paragraphs 21 and 22.

SECOND DEFENSE

As and for its second defense, defendants allege that plaintiff has failed to state a cause of action.

THIRD DEFENSE

As and for its third defense, defendants allege that officers and directors of plaintiff, with the knowledge and consent of plaintiff's Board of Directors and President and in violation of Sections 10(b) and 13(d)(1) of the Securities and Exchange Act of 1934, purchased a large number of shares of the common stock of plaintiff in the months of June, July and August, 1971, and prior thereto; plaintiff comes before the Court with unclean hands and should therefore be denied equitable relief.

WHEREFORE, the defendants demand judgment against the plaintiff dismissing the complaint on its merits and for the full costs and disbursements of this action.

DAVID E. BECKWITH
JAMES O. HUBER
JAMES R. CLARK
By DAVID E. BECKWITH
Attorneys for Defendants

Of Counsel:

Foley & Lardner
735 North Water Street
Milwaukee, Wisconsin 53202

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

[Caption Omitted]

Defendants' Motion for Summary Judgment

Case No. 71-C-335

Now comes defendants by their attorneys, David E. Beckwith, James O. Huber and James R. Clark, and move the Court for an order dismissing plaintiff's complaint upon its merits pursuant to Rule 56 of the Federal Rules of Civil Procedure. Defendants' motion is based upon the transcripts of the depositions of Francis A. Rondeau, John E. Forester, Clarence Scholtens and San W. Orr, Jr., and upon the affidavit of David E. Beckwith attached hereto.

Dated: December 24, 1971.

DAVID E. BECKWITH
JAMES O. HUBER
JAMES R. CLARK
By David E. Beckwith
Attorneys for Defendants

Of Counsel:

FOLEY & LARDNER
735 North Water Street
Milwaukee, Wisconsin 53202

Affidavit in Support of Defendants' Motion for Summary Judgment

State of Wisconsin)
Milwaukee County) : ss

David E. Beckwith, being first duly sworn, on oath deposes and says:

1. I am an attorney licensed to practice in the State of Wisconsin and admitted to practice in this Court. I am a member of the firm of Foley & Lardner of Milwaukee, Wisconsin, and I am one of the attorneys for the defendants in this action. I make this affidavit in support of defendants' motion for summary judgment pursuant to Rule 56, being authorized so to do.

2. At a pretrial conference in this action held on December 8, counsel for the parties agreed that defendants would move for summary judgment so that the Court could consider, as a matter of law, the question of whether all or any of the remedies sought by plaintiff in this action are appropriate in the present circumstances and that the legal issue would be brought before the Court on a stipulation of facts which attorneys for the plaintiff and defendants would endeavor to prepare. It was further agreed that those matters which, by reason of disagreement concerning the facts or by reason of disagreement respecting relevancy or materiality, were not included in the stipulation could be incorporated in affidavits to be submitted in support of, or in opposition to, defendants' motion. It was understood, I believe, that the Court would endeavor to decide whether in the present circumstances any of the remedies sought by plaintiff were appropriate based upon the stipulated facts, or upon those facts respecting which there was no material dispute. In the event that the Court felt it necessary to consider disputed facts to resolve the motion, the motion would be denied without prejudice and the matter would be scheduled for an early trial. Subsequent to the December 8 pretrial conference the Court issued its order of December 13 confirming the understandings arrived at the pretrial conference.

3. I prepared a draft stipulation of facts and submitted it to plaintiff's counsel, Laurence C. Hammond, Jr., on Monday, December 20. Late on Wednesday, December 22, Mr. Hammond advised that the draft stipulation was unacceptable and suggested that in lieu of a stipulation of facts that I should file whatever I thought was an appropriate affidavit. Mr. Hammond had no alternative draft stipulation. He said that he would check the tabulations of stock purchases and stock registrations which I propose to affix to the stipulation of facts but I told him that I was certain that there would not be time for him to confirm the accuracy of the schedules that we had prepared. Accordingly, in spite of the understandings which I thought were arrived at on December 8, defendants' motion for summary judgment is not accompanied by a stipulation of facts and this affidavit, together with certain deposition transcripts referred to below are submitted in support of defendants' motion.

4. In addition to this affidavit and the schedules attached to it, defendants submit in support of their motion for summary judgment the depositions of Francis A. Rondeau, John E. Forester, Clarence Scholtens and San W. Orr, Jr. Defendants' brief will refer to deposition transcript pages where appropriate. To make those depositions a part of the record for purposes of this motion they are incorporated by reference herein as though attached to this affidavit or set forth in full herein. The statements which follow in this affidavit are based upon deposition testimony, deposition exhibits or documents produced in response to requests or demands for document production (or subpoenas duces tecum), and in some limited and minor respects information provided directly to me by defendants. I have endeavored to incorporate in this affidavit only those material facts which I believe are not in substantial dispute and which I believe are pertinent to defendants' motion.

5. Francis A. Rondeau is a resident of Mosinee, Wisconsin. He is 54 years old, married and has seven children. His formal education ended upon his graduation from Mosinee High School in 1934. Following his graduation Mr. Rondeau worked for Marathon Creamery as a route man, salesman and later, a buyer. He remained employed by the Creamery until approximately 1940. He then became associated with various businesses, and, by 1950 was generally engaged in the cold storage business, in which he has achieved considerable success.

At the present time Rondeau is President and General Manager of Mosinee Cold Storage, Inc.; President of Wausau Cold Storage Company, Inc.; President and a director of Francis Rondeau, Inc.; President and a director of Rondeau Foundation (a non-profit charitable corporation established by the Rondeau family in 1956); a limited partner of Rondeau & Company; and a director of First Wisconsin National Bank of Wausau. His business activities include the cold storage business, banking and investments. George Rondeau, a son of Francis A. Rondeau resides in Rothschild, Wisconsin. He is Manager, Treasurer and a director of Wausau Cold Storage Company, Inc., and is the general partner of Rondeau & Company.

6. Mosinee Paper Corporation is a Wisconsin corporation with its principal place of business at Mosinee, Wisconsin. It is principally engaged in the businesses of manufacturing, converting and selling specialty papers, paper products and plastics. It has operations in Mosinee, Columbus and Green Bay, as well as timber holdings. Its only class of equity security outstanding and registered pursuant to Section 12 of the Securities Exchange Act of 1934 (15 U.S.C., Section 781) is common stock, of which there were 806,177 shares outstanding as of August 31, 1971. Mosinee Paper Corporation, in recent history and until 1970, showed steadily increasing sales and profits. It reported a decline in earnings in 1970 as well as a continuing decline in the first quarter of 1971. In the spring of 1971, the directors of Mosinee reduced its dividend.

7. The President of Mosinee is Clarence Scholtens; the Chairman of the Board is John E. Forester. Mr. Forester, an attorney, resides in Wausau and is President of Forwood, Inc., which provides management, accounting and investment services to certain trusts and individuals, all of which trusts were established by Mr. and Mrs. Cyrus C. Yawkey and their descendents. Collectively, Mr. Forester, his wife and the Yawkey/Woodson trusts are the largest stockholder of Mosinee Paper Corporation. Mr. Forester is a director of many corporations; he is a director, officer and stockholder of Wisconsin Valley Trust Company, Mosinee's transfer agent.

8. In the winter of 1971, Mr. Rondeau had occasion to consider an investment in Mosinee Paper Corporation. He concluded Mosinee was a good investment and at all relevant times during 1971 openly expressed his opinion that Mosinee common stock was a good investment. In 1971 the stated book value of Mosinee common stock was $19 per share. He made his first purchase, through the Milwaukee Company, on April 5, 1971: 500 shares at $12½ per share, purchased in his own name. This initial purchase was registered on the books of Mosinee Paper Corporation's stock transfer agent, Wisconsin Valley Trust Company, on April 28, 1971.

9. With 806,177 shares of Mosinee Paper Corporation stock outstanding at all relevant times herein, it requires approximately 40,309 shares to constitute 5% of the issued and outstanding stock of Mosinee Paper Corporation. Based upon broker confirmations, Mr. Rondeau had acquired a total of 40,413 shares of Mosinee common stock by May 17, 1971. See Exhibit A attached hereto. However, due to the lag in time between the confirmation of orders and the registration of stock transfers on the books of Mosinee's transfer agent, it was not until July 9, 1971, that

Mosinee's stock register indicated that Mr. Rondeau and his related concerns were record owners of more than 40,309 shares. See Exhibit B attached hereto. The exact cumulative total of shares owned by Mr. Rondeau and his related concerns on July 9, as shown in the records of the transfer agent, was 45,226. All shares purchased by Rondeau and his related concerns were purchased by, and registered in the name of, Rondeau or in the names of firms or corporations known to be controlled by him. Exhibit A attached hereto is a tabulation of the purchase of Mosinee stock by Rondeau and his related concerns prepared from Rondeau records. Exhibit B attached hereto is a taublation of the registration of Mosinee in the names of Rondeau or his related concerns prepared from copies of the Mosinee stock transfer sheets. Both exhibits were prepared under my supervision and I believe them to be true and accurate. Any error or discrepancies are minor and not material to defendants' motion.

10. In April, 1971 Clarence Scholtens learned from the stock transfer sheets, which he had received from Wisconsin Valley Trust Company, that Mr. Rondeau had made several purchases of Mosinee stock. Mr. Forester has also stated that he first learned that Mr. Rondeau was purchasing Mosinee shares in April, 1971 when he saw the transfer sheets. The President of Mosinee (Scholtens) receives copies of its stock transfer sheets and informs Mr. Forester of any significant acquisitions. When Mr. Rondeau's holdings of Mosinee stock reached 18,000 shares on the Company's records, Mr. Scholtens contacted Mr. Rondeau by telephone, to welcome him as a new substantial shareholder of the Company, and to inquire as to his purpose in purchasing Mosinee shares. (Mr. Forester has stated that he considered Mr. Rondeau's early purchases "significant" because they were large purchases of stock of a relatively small corporation.) Both parties to the telephone call agreed that Mr. Rondeau stated at the time that he felt

the stock was underpriced, was a good investment, and that he intended to continue to purchase shares.

11. Mr. Scholtens continued to keep informed of Mr. Rondeau's purchases of Mosinee stock by examining the Company's stock transfer records and having his secretary keep a running, cumulative tabulation of Mr. Rondeau's holdings. Mr. Forester's assistant, Mr. San W. Orr, Jr., was provided with copies of the Company's stock transfer sheets, and also kept a running total of Mr. Rondeau's purchases.

12. During the months of April, May, June and July, the price of Mosinee stock remained stable and Mr. Rondeau continued to purchase in substantial amounts. As indicated earlier, by May 17 Mr. Rondeau's purchases exceeded 5% of the total outstanding stock of the Company and by the time his purchases were concluded in the first few days of August he had purchased about 8% of the Company's common stock.

13. Mr. Rondeau, although a successful and knowledgeable businessman, has stated that he has had no background in the federal securities laws and did not know until on or about July 30, 1971, that when his holdings of Mosinee common stock exceeded 5% he was required, by the Williams Act (15 U.S.C. § 78m), to file a Schedule 13D, within ten days, with the Securities & Exchange Commission and send a copy to Mosinee Paper Corporation. Mr. Rondeau has stated that he had asked a stockbroker earlier in 1971 generally about federal securities laws and had been advised that he did not need to be concerned about filing anything with the SEC until his holdings of the stock of any one company exceeded 10%. That had been the law until December of 1970 when the Securities & Exchange Act of 1934 was amended to reduce the requirement in Section 13(d)(1) from 10% to 5%. 15 U.S.C. § 78m(d)(1). Mr. Forester, a lawyer, a director of numerous corporations, and manager of several very large trusts, has acknowledged

that he too was not familiar with the filing requirements of the Act.

14. In July, Mr. Scholtens and Mr. Forester discussed the fact that Mr. Rondeau's holdings of Mosinee stock had exceeded 60,000 shares, and decided that Mr. Forester should get in touch with Mr. Rondeau. On July 30, Mr. Forester wrote to Mr. Rondeau to suggest that they meet to discuss Mr. Rondeau's purchases and holdings. A copy of this letter is attached hereto as Exhibit C. In this letter, Mr. Forester observed that "your activity in the stock seems to have created some problems under the Federal Securities Laws for both you and the Company and these, too, might be discussed." He also observed that Mr. Rondeau's activity in the company stock had given rise to numerous rumors, some of which had been circulating in the Mosinee mill.

15. Upon receiving Mr. Forester's letter, Mr. Rondeau promptly contacted Attorney Lyman A. Precourt, a partner in the law firm of Foley & Lardner, and was advised that he would have to file a Schedule 13D and further that he should immediately discontinue purchases of Mosinee stock. However, there were several outstanding orders that were completed the first few days in August and one delivery of shares in September pursuant to an earlier July confirmation.

16. In the months of May, June and July, it was generally well known in Wausau and Mosinee that Mr. Rondeau was purchasing Mosinee stock in substantial amounts. None of Mr. Rondeau's purchases were made in nominee or street name, and all of the stock was registered either in his own name (34,679 shares) or in the names of companies identified with him (31,898 shares).

17. Mr. Forester, for himself, his wife, and five of the trusts that he manages, decided in late 1970 or early 1971 to purchase additional shares of Mosinee Paper Corporation stock. Until July 30 his purchases of Mosinee stock had been regular, in rather modest amounts, and for the most part through brokers in Wausau. Beginning July 30, and for the next four trading days, however, he, and the trusts he manages, purchased over 20,000 shares, with the bulk of the purchases made through a broker in Buffalo, New York. Exhibit D attached hereto is a schedule of Mosinee stock purchases made by Forester, his wife and the trusts he manages prepared under my supervision from records produced by Mr. Forester at his deposition. I believe the tabulation to be true and accurate. On August 9, 1971, Mr. Forester, for himself and his wife, and the trusts Forwood manages, filed a Schedule 13D, a copy of which is attached as Exhibit E.

18. Mr. Rondeau has stated that as his holdings of Mosinee stock grew in June and July and rumors circulated that his stock purchases were a matter of concern at the Company, he began to give some thought to the persons managing the company, the composition of its board of directors and its future prospects. He has stated, however, that he did not give any serious consideration to attempting to obtain control of the Company or to tendering for its shares or to soliciting proxies from its shareholders at that point in time. He has stated that it was only after his initial telephone conversation with Mr. Precourt and subsequently when they met in Mr. Precourt's office and he learned that it would be necessary for him to clearly state in his 13D Schedule not only the purpose that he had when he purchased Mosinee Paper Corporation stock in the months of April, May, June and July, but also any purpose that he might have in the future as respects Mosinee Paper Corporation, that he seriously considered and discussed with Mr. Precourt the wisdom of a tender offer for Mosinee stock. Subsequently, Mr. Rondeau told Mr. Precourt to include a statement in the Schedule 13D indicating that he was giving consideration to a tender offer. He has stated

that he took no active or affirmative steps looking to a tender offer or proxy solicitation until after his Schedule 13D was filed.

19. It is admitted that Mr. Rondeau gave little attention to the source of the funds that were invested in Mosinee stock, or to the allocation and registration of Mosinee shares either in his own name or in the name of his various enterprises whose cash was used to purchase the shares.

Accordingly, it was difficult in August to determine exactly how many shares had been purchased and to allocate the shares between Mr. Rondeau and the various companies that he controls. However, the total amount of shares purchased was ascertained and correctly stated in Mr. Rondeau's 13D Schedule, which was filed on August 25, and of which a copy is attached hereto as Exhibit F.

It was later discovered that the allocation among the Rondeau entities shown on the 13D Schedule was not accurate. When all of the allocations were completed and verified, Mr. Rondeau filed a supplement to his 13D Schedule on September 29, a copy of which is attached hereto as Exhibit G. The supplement corrected two items and added further explanation in the case of three other items, notably his statement of purpose.

20. Within a few days after Mr. Rondeau's Schedule 13D was received by Mosinee Paper Corporation it wrote to each of its shareholders and later issued a press release, copies of which are attached hereto as Exhibits H, I and J, calling attention to Mr. Rondeau's statement that he was considering a tender offer. It commenced this action on September 2. For a day or two after the aforesaid press release was issued, Mosinee stock was quoted as high as \$19-\$21 per share. However, there is no evidence that Mosinee stock ever traded at that level and within a few days it dropped back to the \$12½-\$14 range, where it remains today.

21. Management of Mosinee continued to communicate with its shareholders. Exhibit K. Mr. Rondeau, for the purpose of communicating with Mosinee's shareholders as well as for the purpose of determining whether he would proceed with a tender offer or to solicit proxies, requested, starting in September, that Mosinee provide him with a copy of its shareholder list. No shareholders' list was provided to Mr. Rondeau, and after several letters from Mr. Scholtens, which were largely unresponsive to his request, Mr. Rondeau filed a mandamus action in the Circuit Court for Marathon County to obtain the stockholders' list pursuant to court order. That action is pending and should be resolved within the next few weeks.

22. To provide additional information and background I have attached hereto recent financial reports of Mosinee Paper Corporation as Exhibits L, M and N.

/s/ David E. Beckwith
DAVID E. BECKWITH

Subscribed and sworn to before me this 24th day of December, 1971.

Olive Waldrop
Notary Public, Milwaukee County, Wisconsin.

My Commission Expires: 5/28/72

[Notarial Seal]

Exhibit A

TABULATION OF FRANCIS A. RONDEAU, ET AL. MOSINEE PAPER CORPORATION STOCK PURCHASES BASED ON BROKER CONFIRMATIONS

Date— '71	*No. of Shares*	*Buyer*	*Broker*	*Price*	*Cum. Total*
4/ 5	500	Francis A. Rondeau	Milwaukee Company	12¼	500
4/23	6,000	"	"	12½	6,500
4/23	5,500	Francis Rondeau, Incorporated	"	12½	12,000
4/23	4,200	Mosinee Cold Storage	"	12½	16,200
4/23	1,800	Wausau Cold Storage	"	12½	18,000
4/26	400	Mosinee Cold Storage	Piper, Jaffrey & Hopwood		18,400
4/27	150	"	"		18,550
4/28	500	"	"		19,050
4/28	2,000	"	"		21,050
4/28	1,000	Francis A. Rondeau	Robert W. Baird	12¾	22,050
4/30	2,000	"	Milwaukee Company	12½	24,050
4/30	1,000	Francis Rondeau, Incorporated	"	12½	25,050
5/ 4	500	Francis A. Rondeau	Robert W. Baird	12¾	25,550
5/ 6	500	"	"	12¾	26,050
5/10	1,000	"	"	12½	27,050
5/11	516	Rondeau Foundation	Milwaukee Company	12¾	27,566
5/12	380	Francis A. Rondeau	Robert W. Baird	12½	27,946
5/13	1,347	"	"	12⅝	29,293
5/13	7,130	Francis A. Rondeau	Piper, Jaffrey & Hopwood		36,423
5/14	1,000	Rondeau & Company	Milwaukee Company	12⅝	37,423
5/17	1,300	Francis Rondeau, Incorporated	"	12⅝	38,723
5/17	1,690	Francis A. Rondeau	Piper, Jaffrey & Hopwood		40,413
5/18	1,800	Francis A. Rondeau	Milwaukee Company	12½	42,213
5/19	400	"	Robert W. Baird	12½	42,613
5/20	1,300	Rondeau & Company	Milwaukee Company	12½	43,913
5/21	1,900	Francis A. Rondeau	Piper, Jaffrey & Hopwood		45,813
5/25	2,300	"	"		48,113
5/26	1,980	"	"		50,093
5/26	100	"	Robert W. Baird	12¾	50,193
6/ 3	500	"	"	12¾	50,693
6/ 4	200	"	Milwaukee Company	12⅞	50,893
6/ 7	120	"	Robert W. Baird	12¾	51,013
6/ 8	500	"	"	12¾	51,513
6/10	400	"	"	12¾	51,913
6/17	1,150	"	Piper, Jaffrey & Hopwood		53,063
6/18	100	"	Robert W. Baird	12¾	53,163
6/18	220	"	"	12¾	53,383
6/18	820	"	"	12¾	54,203
6/22	400	Rondeau & Company	Milwaukee Company	12¾	54,603
6/22	200	"	"	12¾	54,803
6/23	400	"	"	12¾	55,203
7/ 1	500	Francis A. Rondeau	Piper, Jaffrey & Hopwood		55,703
7/ 6	300	Francis A. Rondeau, Agent	Milwaukee Company	12¾	56,003
7/ 9	200	"	"	12¾	56,203
7/ 9	850	Francis A. Rondeau	Piper, Jaffrey & Hopwood		57,053
7/ 9	200	"	Robert W. Baird	12¾	57,253
7/12	300	"	"	12¾	57,553
7/12	400	Francis A. Rondeau, Agent	Milwaukee Company	12¾	57,953

Date—'71	*No. of Shares*	*Buyer*	*Broker*	*Price*	*Cum. Total*
7/13	200	Francis A. Rondeau, Agent	Milwaukee Company	12¾	58,153
7/13	200	Francis A. Rondeau	Robert W. Baird	12¾	58,353
7/13	300	”	”	12¾	58,653
7/15	200	Francis A. Rondeau, Agent	Milwaukee Company	12¾	58,853
7/15	220	Francis A. Rondeau	Piper, Jaffrey & Hopwood		59,073
7/16	200	Francis A. Rondeau, Agent	Milwaukee Company	12¾	59,273
7/16	300	”	”	12¾	59,573
7/19	100	”	”	12¾	59,673
7/20	500	”	”	12¾	60,173
7/21	1,204	Francis A. Rondeau	Piper, Jaffrey & Hopwood		61,377
7/21	400	”	S. C. Parker	13	61,777
7/22	240	Francis A. Rondeau, Agent	Robert W. Baird	12¾	62,017
7/22	60	”	”	12¾	62,077
7/27	200	”	”	12¾	62,277
7/27	200	”	Milwaukee Company	12¾	62,477
7/27	300	”	”	12¾	62,777
7/29	400	”	”	12¾	63,177
7/29	1,000	”	”	12¾	64,177
7/29	1,000	”	Robert W. Baird	12¾	65,177
7/30	500	”	Milwaukee Company	12¾	65,677
7/30	200	Francis A. Rondeau	Piper, Jaffrey & Hopwood		65,877
8/ 4	300	Francis A. Rondeau, Agent	Robert W. Baird	12¾	66,177
8/ 4	400	”	Milwaukee Company	13	66,577

Exhibit B

FRANCIS A. RONDEAU, ET AL.

CHRONOLOGICAL CUMULATIVE TOTAL OF MOSINEE PAPER CORP. STOCK REGISTRATIONS

4/28/71	500	500
5/ 6/71	5,500	6,000
5/ 6/71	4,200	10,200
5/ 6/71	1,800	12,000
5/ 6/71	6,000	18,000
5/ 7/71	500	18,500
5/25/71	516	19,016
6/ 9/71	3,050	22,066
6/18/71	100	22,166
6/23/71	500	22,666
6/23/71	1,000	23,666
6/30/71	1,900	25,566
7/ 1/71	2,620	28,186
7/ 1/71	2,100	30,286
7/ 1/71	120	30,406
7/ 1/71	400	30,806
7/ 8/71	100	30,906
7/ 8/71	500	31,406
7/ 8/71	220	31,626
7/ 9/71	1,500	33,126
7/ 9/71	3,000	36,126
7/ 9/71	3,100	39,226
7/ 9/71	2,500	41,726
7/ 9/71	3,500	45,226

7/14/71	1,100	46,326
7/14/71	950	47,276
7/14/71	1,000	48,276
7/14/71	1,300	49,576
7/14/71	1,000	50,576
7/20/71	600	51,176
7/20/71	127	51,303
7/23/71	500	51,803
7/23/71	600	52,403
7/23/71	1,100	53,503
8/ 5/71	60	53,563
8/ 5/71	240	53,803
8/ 5/71	200	54,003
8/ 5/71	200	54,203
8/ 5/71	300	54,503
8/ 5/71	500	55,003
8/ 5/71	850	55,853
8/ 5/71	820	56,673
8/ 5/71	200	56,873
8/10/71	1,520	58,393
8/12/71	400	58,793
8/12/71	400	59,193
8/12/71	300	59,493
8/23/71	200	59,693
8/23/71	300	59,993
8/23/71	1,204	61,197
8/23/71	600	61,797
8/23/71	300	62,097
8/26/71	1,000	63,097
8/26/71	1,000	64,097
8/30/71	1,400	65,497

Exhibit C

MOSINEE PAPER CORPORATION
P.O. BOX 65
WAUSAU, WISCONSIN 54401

July 30, 1971

John E. Forester
Chairman of the Board
Mr. Francis A. Rondeau
Mosinee, Wisconsin

Dear Francis:

The stock transfer sheets for Mosinee Paper Corporation indicate that you have a substantial stock interest in the Company at this time and considerably more shares than Chum understood to be your objective. I discussed the matter with Chum, who is in Boston, yesterday, and he suggested that I set up a meeting with you as soon as he returns. Chum is expected in Mosinee late Tuesday night and would be available for a meeting any time Wednesday morning or early afternoon.

Your activity in the Company's stock has given rise to numerous rumors, some of which have been circulating in the mill. In the interest of the welfare of the Company we would hope that these rumors could be put to rest.

Your activity in the stock seems to have created some problems under the Federal Securities Laws for both you and the Company and these, too, might be discussed.

We feel that a meeting might better be held at some place other than the mill or your office and I would suggest that we meet in our offices on the sixth floor of the First American National Bank Building.

I shall call you on Monday to see if the suggested time and place for a meeting fit in with your plans and will then firm it up with Chum who will be traveling back to Mosinee.

Yours most sincerely,
/s/ John E. Forester

JEF/gh

Exhibit D

JOHN E. FORESTER, ET AL. STOCK OWNERSHIP AND PURCHASES MOSINEE PAPER CORPORATION

11/70-8/9/71 PER SEC FORMS 4 and 13D FILED 8/9/71

Date	*No. of Shares*	*Cum. Total*	*Purchaser*	** Total Held*
11/30/70	2700		JEF	33,166
12/15/70	700	3,400	JEF	33,866
12/21/70	600	4,000	JEF	34,466
12/30/70	300	4,300	JEF	34,766
12/31/70	200	4,500	JEF	34,966
1/8/71	500	5,000	JEF	35,466
1/14/71	300	5,300	JEF	35,766
1/19/71	500	5,800	JEF	36,266
1/21/71	4986	10,786	JEF	41,252
1/22/71	500	11,286	JEF	41,752
1/26/71	100	11,386	JEF	41,852
1/27/71	600	11,986	JEF	42,452
1/30/71	200	12,186	JEF	42,652
3/18/71	400	12,586	JEF	43,052
3/19/71	500	13,086	JEF	43,552
3/27/71	200	13,286	JEF	43,752
4/6/71	1012	14,298	JEF	44,764
4/20/71	400	14,698	JEF	45,164
4/21/71	200	14,898	JEF	45,364
7/30/71	660	15,558	JEF	46,024
7/30/71	3033	18,591	NW Spire Tr.	49,057
7/30/71	3033	21,624	AWF Trust	52,090
7/30/71	3034	24,658	MW Fisher Tr.	55,124
8/2/71	2950	27,608	NW Spire Tr.	58,074
8/2/71	2950	30,558	AWF Trust	61,024
8/2/71	2950	33,508	MW Fisher Tr.	63,974
8/3/71	1183	34,691	NW Spire Tr.	65,157
8/3/71	1183	35,874	AWF Trust	66,340
8/3/71	1183	37,057	MW Fisher Tr.	67,523
8/4/71	1166	38,223	NW Spire Tr.	68,689
8/4/71	1167	39,390	AWF Trust	69,856
8/4/71	1167	40,557	MW Fisher Tr.	71,023
	40,557			

* Includes shares held by 5 trusts identified in 13D filed 8/9/71.

Exhibit E

SCHEDULE 13 D

Item 1. *Security and Issuer.*

State the title of the class of equity securities to which this statement relates and the name and address of the issuer of such securities.

$5 Par Value Common Stock—Mosinee Paper Corporation, Mosinee, Wisconsin

Item 2. *Identity and Background.*

State the following with respect to the person filing this statement:

(a) Name and business address: John E. Forester, 602 First American National Bank Bldg., Wausau, Wisconsin 54401.

(b) Residence address: Franklin Hill, Wausau, Wisconsin 54401.

(c) Present principal occupation or employment and the name, principal business and address of any corporation or other organization in which such employment is carried on:

President, Forewood, Inc., 602 First American National Bank Building, Wausau, Wisconsin 54401.

(d) Material occupations, positions, offices or employments during the last 10 years, giving the starting and ending dates of each and the name, principal business and address of any business corporation or other organization in which each such occupation, position, office or employment was carried on:

See attached Corporate Affiliations.

(e) Whether or not, during the last 10 years, such person has been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) and, if so, give the dates, nature of conviction, name and location of court, and penalty imposed, or other disposition of the case. A negative answer to this sub-item need not be furnished to security holders.

Answer: None

Item 3. *Source and Amount of Funds or Other Consideration.*

State the source and amount of funds or other consideration used or to be used in making the purchases, and if any part of the purchase price or proposed purchase price is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, or trading the securities, a description of the transaction and the names of the parties thereto:

John E. Forester	Cash	$ 8,475.10
1949 Nancy Woodson Spire Trust	Cash	104,162.50
1949 Alice Woodson Forester Trust	Cash	104,162.50
1949 Margaret Woodson Fisher Trust	Cash	104,162.50

No borrowings.

Item 4. *Purpose of Transaction.*

State the purpose or purposes of the purchase or proposed purchase of securities of the issuer. If the purpose or one of the purposes of the purchase or proposed purchase is to acquire control of the business of the issuer, describe any plans or proposals which the purchasers may have to liquidate the issuer, to sell its assets or to merge it with any other persons, or to make any other major change in its business or corporate structure, including, if the issuer is a registered closed-end investment company, any plans or proposals to make any changes in its investment policy for which a vote would be required by Section 13 of the Investment Company Act of 1940 (15 U.S.C. 80a-13).

Answer: For investment.

Item 5. *Interest in Securities of the issuer.*

State the number of shares of the security which are beneficially owned, and the number of shares concerning which there is a right to acquire, directly or indirectly, by (i) such persons, and (ii) each associate of such person, giving the name and address of each such associate. Furnish information as to all transactions in the class of securities to which this statement relates which were effected during the past 60 days by the person filing this statement and by its subsidiaries and their officers, directors and affiliated persons.

(a) *Beneficial Ownership*	*Number of Shares*	
John E. Forester, Box 65, Wausau, Wisconsin	3,502	
Associates		
Alice Woodson Forester, Franklin Hill, Wausau, Wis.	7,424	(2)
1949 Nancy Woodson Spire Trust, Box 65, Wausau, Wis.	15,084	(1) (4)
1949 Alice Woodson Forester Trust, Box 65, Wausau, Wis.	15,086	(1) (3) (4)
1949 Margaret Woodson Forester Trust, Box 65, Wausau, Wis.	15,087	(1) (4)
1960 Nancy W. Spire Trust, Box 65, Wausau, Wis.	7,424	(1)
1957 Margaret W. Fisher Trust, Box 65, Wausau, Wis.	7,416	(1)

(1) John E. Forester is a trustee of these trusts.

(2) Alice Woodson Forester is the wife of John E. Forester.

(3) John E. Forester's wife, Alice Woodson Forester, has a beneficial interest in this trust.

(4) A minor child of Alice Woodson Forester whose residence is John E. Forester's home has a beneficial interest in these trusts.

(b) On July 30, 1971 John E. Forester purchased 660 shares.

Shares were purchased by the trusts listed below on the dates and in the number of shares indicated:

	7/30/71	8/2/71	8/3/71	8/4/71
1949 Nancy Woodson Spire Trust	3,033	2,950	1,183	1,166
1949 Alice Woodson Forester Trust	3,033	2,950	1,183	1,167
1949 Margaret Woodson Fisher Trust	3,934	2,950	1,183	1,167

Item 6. *Contracts, Arrangements, or Understandings with Respect to Securities of the Issuer.*

Furnish information as to any contracts, arrangements, or understandings with any person with respect to any securities of the issuer, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guaranties of loans, guaranties against loss or guaranties of profits, division of losses or profits, or the giving or withholding of proxies, naming the persons with whom such contracts, arrangements, or understandings have been entered into, and giving the details thereof.

Answer: None.

Item 7. *Persons Retained, Employed or to be Compensated.*

Where the Schedule 13D relates to a tender offer, or request or invitation for tenders, identify all persons and classes of persons employed, retained or to be compensated by the person filing this Schedule 13D, or by any person on his behalf, to make solicitations or recommendations to security holders and describe briefly the terms of such employment, retainer or arrangement for compensation.

Answer: Not applicable.

Item 8. *Material to be Filed as Exhibits.*

Copies of all requests or invitations for tenders or advertisements making a tender offer or requesting or inviting tenders, additional material soliciting or requesting such tender offers, solicitations or recommendations to the holders of the security to accept or reject a tender offer or request or invitation for tenders shall be filed as an exhibit.

Answer: Not applicable.

The individual filing this schedule disclaims that he or his named associates are a person or group within the purview or meaning of Section 13D of the Securities Exchange Act and the rules and regulations promulgated by the Securities Exchange Commission thereunder and disclaims the necessity of filing this schedule. The filing is made by the undersigned because he desires to make available the information herein contained to Mosinee Paper Corporation as well as to the Securities and Exchange Commission.

Signature

I certify that to the best of my knowledge and belief the information set forth in this statement is true, complete and correct.

/s/ John E. Forester
JOHN E. FORESTER

August 9, 1971

John E. Forester
602 First American National Bank Building
Wausau, Wisconsin 54401
715-845-9201

CORPORATE AFFILIATIONS

Starting Date (all continue to present)			
1961	Central Wisconsin Bankshares, Inc.	Wausau, Wisconsin	VP & Director
1968	Employers Insurance of Wausau	Wausau, Wisconsin	Director
1961	First American National Bank	Wausau, Wisconsin	Director
1960	Forewood, Inc. (Financial Consulting)	Wausau, Wisconsin	Pres. & Director
1961	Longview Fibre Company	Longview, Washington	Director
1958	Marathon Electric Manufacturing Corporation	Wausau, Wisconsin	VP & Director
1967	The Marathon Electric Foundation, Inc.	Wausau, Wisconsin	VP & Director
1967	Marathon Electric Research of Canada, Ltd.	Toronto, Ontario	VP & Director
1971	Marshall & Ilsley Bank	Milwaukee, Wisconsin	Director
1958	Masonite Corporation	Chicago, Illinois	Director
1969	MCI-North Central States, Inc.	Minneapolis, Minnesota	VP & Director
1958	Montana-Dakota Utilities Co.	Bismarck, North Dakota	VP & Director
1968	Mosinee Paper Mills Company	Mosinee, Wisconsin	Bd Chm & Director
1970	Wausau Paper Mills Company	Brokaw, Wisconsin	Bd Chm & Director
1958	Wausau Theatres Company	Wausau, Wisconsin	Director
1966	Wisconsin Valley Trust Company	Wausau, Wisconsin	Sec-Treas & Director
1952	The Aytchmonde Woodson Foundation, Inc.	Wausau, Wisconsin	Secy & Director
1958	Woodson Fiduciary Corporation	Wilmington, Delaware	Pres., Treas. & Director

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MOSINEE PAPER CORPORATION

STATEMENT FILED PURSUANT TO SECTION 13(d) OF THE SECURITIES EXCHANGE ACT OF 1934

SCHEDULE 13D

Item 1. *Security and Issuer.*

Common Stock, $5.00 par value, Mosinee Paper Corporation (Issuer), Mosinee, Wisconsin 54455.

Item 2. *Identity and Background.*

I. (a) Francis A. Rondeau
P.O. Box 10
Mosinee, Wisconsin 54455

(b) Maple Ridge Road
Mosinee, Wisconsin 54455

(c) President and General Manager of Mosinee Cold Storage, Inc., P.O. Box 10, Mosinee, Wisconsin 54455

Cold storage and food commodities.

(d) (i) President
Wausau Cold Storage Company, Inc.
832 Cleveland Avenue
Wausau, Wisconsin 54401
Cold storage of food commodities

Prior to 1961 to date

(ii) Vice President and Director
First Wisconsin National Bank of Wausau
400 Scott Street
Wausau, Wisconsin 54401

General Banking

1963 to date

(iii) President and Director
Francis Rondeau, Incorporated
P.O. Box 10
Mosinee, Wisconsin 54455

Packaging and processing of natural cheese products

Prior to 1961 to date

(e) Francis A. Rondeau has not, during the past ten years, been convicted in any criminal proceeding.

II. (a) Mosinee Cold Storage, Inc.
P.O. Box 10
Mosinee, Wisconsin 54455

(b) Not applicable

(c) Cold storage of food commodities.

(d) Not applicable

(e) Mosinee Cold Storage, Inc. has not, during the past ten years, been convicted in any criminal proceeding.

Information called for by Item 2 with respect to the officers and directors of Mosinee Cold Storage, Inc. is as follows:

(a)-(e) Francis A. Rondeau, President and Director (The information concerning Francis A. Rondeau contained in I (a)-(e) above is incorporated by reference herein as if fully set forth herein).

(a) Homer Ayvazzadeh
P.O. Box 10
Mosinee, Wisconsin 54455

(b) 1010 Maple Street
Wausau, Wisconsin 54401

(c) Secretary and Director and head of quality control of Mosinee Cold Storage, Inc., P.O. Box 10, Mosinee, Wisconsin 54455 (cold storage of food commodities); Vice-President, Secretary, Director and head of quality control of Francis Rondeau, Incorporated, P.O. Box 10, Mosinee, Wisconsin 54455 (packaging and processing of natural cheese products).

(d) (i) Chemical Engineer
Armour & Company
St. Paul, Minnesota

1962-1964

Meat packer and processor

(ii) Secretary and Director and head of quality control

Mosinee Cold Storage, Inc.
P.O. Box 10
Mosinee, Wisconsin 54455

1964 to date

Cold storage of food commodities

(iii) Vice President, Secretary, Director and head of quality control, Francis Rondeau, Incorporated, P.O. Box 10, Mosinee, Wisconsin 54455

1964 to date

Packaging and processing of natural cheese products

(a) Marie Rondeau (wife of Francis A. Rondeau)
P.O. Box 10
Mosinee, Wisconsin 54455

(b) Maple Ridge Road
Mosinee, Wisconsin 54455

(c) Principal occupation is housewife, but also serves as (i) Treasurer and Director of Mosinee Cold Storage, Inc., P.O. Box 10, Mosinee, Wisconsin

54455 (cold storage of food commodities), (ii) Treasurer and Director of Francis Rondeau, Incorporated, P.O. Box 10, Mosinee, Wisconsin 54455 (packaging and processing of natural cheese products), and (iii) Secretary and Director of Wausau Cold Storage Company, Inc., 832 Cleveland Avenue, Wausau, Wisconsin 54401 (cold storage of food commodities).

(d) (i) 1961-date—housewife

(ii) 1961-date—Treasurer and Director of Mosinee Cold Storage, Inc., P.O. Box 10, Mosinee, Wisconsin 54455 (cold storage of food commodities)

(iii) 1961-date—Treasurer and Director of Francis Rondeau, Incorporated, P.O. Box 10, Mosinee, Wisconsin 54455 (packaging and processing of natural cheese products)

(iv) 1961-date—Secretary and Director, Wausau Cold Storage Company, Inc., 832 Cleveland Avenue, Wausau, Wisconsin 54401 (cold storage of food commodities)

(e) Mrs. Rondeau has not, during the past ten years, been convicted in any criminal proceeding.

III. (a) Francis Rondeau, Incorporated
P.O. Box 10
Mosinee, Wisconsin 54455

(b) Not applicable

(c) Purchasing and processing of natural cheese products

(d) Not applicable

(e) Francis Rondeau, Incorporated has not, during the past ten years, been convicted in any criminal proceeding.

Information called for by Item 2 with respect to the officers and directors of Francis Rondeau, Incorporated is as follows:

(a)-(e) Francis A. Rondeau, President and Director (The information concerning Francis A. Rondeau contained in I (a)-(e) above is incorporated by reference herein as if fully set forth herein).

(a)-(e) Homer Ayvazzadeh, Vice President, Secretary and Director (The information concerning Homer Ayvazzadeh contained in II (a)-(e) above is incorporated by reference herein as if fully set forth herein).

(a)-(e) Marie Rondeau, Treasurer and Director (The information concerning Marie Rondeau contained in II (a)-(e) above is incorporated by reference herein as if fully set forth herein).

IV. (a) Wausau Cold Storage Company, Inc.
832 Cleveland Avenue
Wausau, Wisconsin 54401

(b) Not applicable

(c) Cold storage of food commodities

(d) Not applicable

(e) Wausau Cold Storage Company, Inc. has not, during the past ten years, been convicted in any criminal proceeding.

Information called for by Item 2 with respect to the officers and directors of Wausau Cold Storage Company, Inc. is as follows:

(a)-(e) Francis A. Rondeau, Chairman of the Board, President and Director (The information concerning Francis A. Rondeau contained in I (a)-(e) above is incorporated by reference herein as if fully set forth herein).

(a)-(e) Marie Rondeau, Secretary and Director (The information concerning Marie Rondeau contained in II (a)-(e) above is incorporated by reference herein as if fully set forth herein).

(a) George Rondeau
832 Cleveland Avenue
Wausau, Wisconsin 54401

(b) 1004 Arnold Street
Rothschild, Wisconsin 54474

(c) Manager, Treasurer and Director of Wausau Cold Storage Company, Inc., 832 Cleveland Avenue, Wausau, Wisconsin 54401

Cold storage of food commodities

(d) (i) 1961-1965, Student, Spencerian College, Milwaukee, Wisconsin

(ii) 1965-April, 1967, Sales Representative, Folgers Coffee Co., Kansas City, Missouri, coffee producers

(iii) April, 1967-date, Manager, Treasurer and Director, Wausau Cold Storage Company, Inc., 832 Cleveland Avenue, Wausau, Wisconsin 54401

Cold storage of food commodities

(e) George Rondeau has not, during the past ten years, been convicted in any criminal proceeding.

V. (a) Rondeau Foundation
P.O. Box 10
Mosinee, Wisconsin 54455

(b) Not applicable

(c) Charitable corporation

(d) Not applicable

(e) Rondeau Foundation has not, during the past ten years, been convicted in any criminal proceeding.

Rondeau Foundation is a Wisconsin non-profit charitable corporation organized in 1956. Information with respect to the officers and directors of the Rondeau Foundation is as follows:

(a)-(e) Francis A. Rondeau, President and Director (The information concerning Francis A. Rondeau contained in I (a)-(e) above in incorported by reference herein as if fully set forth herein).

(a)-(e) Marie Rondeau, Secretary and Director (The information concerning Marie Rondeau contained in II (a)-(e) above is incorporated by reference herein as if fully set forth herein).

(a)-(e) George Rondeau, Treasurer and Director (The information concerning George Rondeau contained in IV (a)-(e) above is incorporated by reference herein as if fully set forth herein).

VI. (a) Rondeau & Company
P.O. Box 10
Mosinee, Wisconsin 54455

(b) Not applicable

(c) Rondeau & Company is a limited partnership composed of one general partner and 9 limited partners. It owns real estate and securities.

(d) Not applicable

(e) Rondeau & Company has not, during the past ten years, been convicted in any criminal proceeding.

Information with respect to the general and limited partners of Rondeau & Company is as follows:

(a)-(e) George Rondeau, General Partner (The information concerning George Rondeau contained in

IV (a)-(e) above is incorporated by reference herein as if fully set forth herein).

(a)-(e) Francis A. Rondeau, Limited Partner (The information concerning Francis A. Rondeau contained in I (a)-(e) above is incorporated by reference herein as if fully set forth herein).

(a)-(e) Marie Rondeau, Limited Partner (The information concerning Marie Rondeau contained in II (a)-(e) above is incorporated by reference herein as if fully set forth herein).

(a)-(e) Homer Ayvazzadeh, Limited Partner (The information concerning Homer Ayvazzadeh contained in II (a)-(e) above is incorporated by reference herein as if fully set forth herein).

(a) John Rondeau (Limited Partner)
P.O. Box 10
Mosinee, Wisconsin 54455

(b) Half Moon Lake
Mosinee, Wisconsin 54455

(c) Production Manager, Francis Rondeau, Incorporated, P.O. Box 10, Mosinee, Wisconsin 54455
Packaging and processing of natural cheese products

(d) 1962-1966, Student, St. Norbert's College, Green Bay, Wisconsin

1966-1968, Sales Representative, Shell Oil Company, Des Moines, Iowa

1968 to date, production manager, Francis Rondeau, Incorporated, P.O. Box 10, Mosinee, Wisconsin 54455

(e) John Rondeau has not, during the past ten years, been convicted in any criminal proceeding.

(a) Frank Rondeau (Limited Partner)
704 Kinglet Avenue
Wausau, Wisconsin 54401

(b) 704 Kinglet Avenue
Wausau, Wisconsin 54401

(c) Sales Representative, Hallmark Greeting Card Company, Kansas City, Missouri

Greeting cards

(d) 1965-1969, Student, Spencerian College, Milwaukee, Wisconsin

1969 to date, Sales Representative, Hallmark Greeting Card Company, Kansas City, Missouri

Greeting cards

(e) Frank Rondeau has not, during the past ten years, been convicted in any criminal proceeding.

(a) Earl Rondeau (Limited Partner)
Maple Ridge Road
Mosinee, Wisconsin 54455

(b) Maple Ridge Road
Mosinee, Wisconsin 54455

(c) Student, Mosinee High School, Mosinee, Wisconsin

(d) None

(e) Earl Rondeau has not, during the past ten years, been convicted in any criminal proceeding.

(a) Carol Rondeau Ayvazzadeh (Limited Partner)
1010 Maple Street
Wausau, Wisconsin 54401

(b) 1010 Maple Street
Wausau, Wisconsin 54401

(c) Housewife

(d) Housewife for over past ten years.

(e) Carol Rondeau Ayvazzadeh has not, during the past ten years, been convicted in any criminal proceeding.

(a) Paul Rondeau (Limited Partner)
c/o Rubuen Cocoa Restaurant
Phoenix, Arizona

(b) Apartment #227
Canlan Apartments
5145 North 7th Street
Phoenix, Arizona 85014

(c) Assistant Manager, Rubuen Cocoa Restaurant, Phoenix, Arizona

Restaurant

(d) (i) September 1967—January 1971, Student, St. Norbert's College, Green Bay, Wisconsin

(ii) January 1971 to date—Assistant Manager, Rubuen Cocoa Restaurant, Phoenix, Arizona

Restaurant

(e) Paul Rondeau has not, during the past ten years, been convicted in any criminal proceeding.

(a) Rosylind Rondeau (Limited Partner)
18410 Jamaica Avenue
Hollis, New York 11423

(b) Apartment #2D
433 East 83rd Street
New York, New York 10028

(c) Designer, Ideal Toy Company, 18410 Jamaica Avenue, Hollis, New York 11423

Toy manufacturer

(d) (i) 1961-1963, Designer, Hallmark Greeting Card Company, Kansas City, Missouri

Greeting cards

(ii) 1963-1965, Designer, Playskool Toy Company, Chicago, Illinois

Toy manufacturer

(iii) 1965-1967, Designer, Tootsie Toy Division of Strombecker Corporation, Chicago, Illinois

Toy manufacturer

(iv) 1968, Designer, Sylvestries, Chicago, Illinois
Commercial Designers and Decorators

(v) 1969 to date, Designer, Ideal Toy Company, 18410 Jamaica Avenue, Hollis, New York 11423

Toy manufacturer

(e) Rosylind Rondeau has not, during the past ten years, been convicted in any criminal proceeding.

NOTE: Francis A. Rondeau, through stock ownership, corporate offices, and family relationships, controls Mosinee Cold Storage, Inc., Wausau Cold Storage Company, Inc. and Francis Rondeau, Incorporated. In addition, he also controls the Rondeau Foundation and Rondeau & Company. Information with respect to Francis A. Rondeau as required by Items (a)-(e) of Item 2 of this Schedule 13D is set forth in I (a)-(e) above and is incorporated herein by reference as if fully set forth herein.

Item 3. *Source and Amount of Funds or Other Consideration.*

All purchases of the Issuer's common stock made to date have been financed as follows:

1. Approximately $598,000 from Francis A. Rondeau of which approximately $300,000 came from Mr. Rondeau's own funds and the remainder borrowed from Rondeau & Company on open account.

2. Mosinee Cold Storage, Inc. borrowed $30,000 from the First Wisconsin National Bank of Wausau on a 90-day note at 5¼% secured by certain securities owned by it and related companies named herein. This loan has been repaid.

3. Francis Rondeau, Incorporated borrowed $100,000 from the First Wisconsin National Bank of Wausau on a 90-day note at 5¼% secured by certain securities owned by it and related companies named herein. This loan has been repaid.

4. Rondeau & Company borrowed $307,000 from the First Wisconsin National Bank of Milwaukee at an annual interest rate of 6% secured by certain securities owned by it and related companies named herein. This loan has been repaid.

NOTE: Of the funds identified in 1 to 4 above, approximately $865,500 was utilized to purchase common stock of the Issuer and the balance used to make purchases of securities of other corporations.

Francis A. Rondeau and one or more of his controlled corporations and other entities presently are considering investing approximately $3,600,000 of additional funds in the common stock of the Issuer. These funds are expected to be obtained as follows:

(a) $1,200,000 to be invested by Mosinee Cold Storage, Inc., out of proceeds to be received from the sale of real property located in Marathon County, Wisconsin; such transaction is expected to close within the next 12 months;

(b) Francis A. Rondeau and his associates propose to sell approximately $1,000,000 of marketable securities to provide additional funds for investment in common stock of the Issuer;

(c) The balance of the monies, if invested, will be borrowed although no commitments for any such borrowings or loans have been entered into or have gone beyond the negotiation and discussion stage.

Item 4. *Purpose of Transaction.*

Francis A. Rondeau determined during early part of 1971 that the common stock of the Issuer was undervalued in the over-the-counter market and represented a good investment vehicle for future income and appreciation. Francis A. Rondeau and his associates presently propose to seek to acquire additional common stock of the Issuer in order to obtain effective control of the Issuer, but such investments as originally determined were and are not necessarily made with this objective in mind. Consideration is currently being given to making a public cash tender offer to the shareholders of the Issuer at a price which will reflect current quoted prices for such stock with some premium added. In the event control of the business of the Issuer is obtained, Francis A. Rondeau and his associates have no intention to liquidate the business of the Issuer, sell its assets, merge it with any other group or entity, or make any other major change in its business or corporate structure except with respect to consideration being given to management changes in an effort to provide a Board of Directors which is more representative of all of the shareholders, particularly those outside of present management, in order to improve such management with the intent of attempting to better assure the stockholders' equity growth and payment of increased dividends, if possible.

All such purchases were effected through registered broker-dealers in the over-the-counter market at prevailing prices and were made over a period of time from April 5, 1971 through August 4, 1971.

Item 5. *Interest in Securities of the Issuer.*

	No. of Shares Owned of Record and Benefically
Francis A. Rondeau (individually and as agent for companies listed below)	45,911
Associates:	
Mosinee Cold Storage, Inc. P.O. Box 10 Mosinee, Wisconsin 54455	7,250
Francis Rondeau, Incorporated P.O. Box 10 Mosinee, Wisconsin 54455	7,800
Wausau Cold Storage Company, Inc. 832 Cleveland Avenue Wausau, Wisconsin 54401	1,800
Rondeau Foundation P.O. Box 10 Mosinee, Wisconsin 54455	516
Rondeau & Company P.O. Box 10 Mosinee, Wisconsin 54455	3,300
Total	66,577

Within the past 60 days, Francis A. Rondeau has purchased 10,974 shares of the Issuer and his associate, Rondeau & Company, has purchased 1,000 shares. Neither Francis A. Rondeau nor any of his associates named above have any right to acquire, directly or indirectly, any additional shares.

Item 6. *Contracts, Arrangements, or Understandings With Respect to Securities of the Issuer.*

None

Item 7. *Persons Retained, Employed or to be Compensated.*

Not applicable

Item 8. *Material to be Filed as Exhibits.*

Not applicable

I certify that to the best of my knowledge and belief, the information set forth in this statement is true, complete and correct.

August 25, 1971

/s/ Francis A. Rondeau
Francis A. Rondeau
MOSINEE COLD SORAGE, INC.
By /s/ Francis A. Rondeau
Francis A. Rondeau

FRANCIS RONDEAU, INCORPORATED
By /s/ Francis A. Rondeau
Francis A. Rondeau

WAUSAU COLD STORAGE COMPANY, INC.
By /s/ Francis A. Rondeau
Francis A. Rondeau

RONDEAU FOUNDATION
By /s/ Francis A. Rondeau
Francis A. Rondeau

RONDEAU & COMPANY
By /s/ Francis A. Rondeau
Francis A. Rondeau

Exhibit G

MOSINEE PAPER CORPORATION

AMENDMENT TO STATEMENT FILED PURSUANT TO SECTION 13(d) OF THE SECURITIES EXCHANGE ACT OF 1934

AMENDMENT TO SCHEDULE 13D HERETOFORE FILED

This Amended Schedule 13D is hereby made and filed in order to amend, clarify and supplement the Schedule 13D of the undersigned, dated August 25, 1971. This Amended Schedule 13D has been required because all of the transactions concerning the purchase of common stock of the Issuer by Francis A. Rondeau and his associates were not as of August 25, 1971, fully accounted for and recorded and full description thereof was not at that date possible. In addition, a further review of such transactions has revealed that some additional disclosures should be made and minor corrections to such Schedule 13D specified.

1. With respect to Item 3, the undersigned, Mosinee Cold Storage, Inc., and Francis Rondeau, Incorporated, now state and aver that no part of the proceeds of loans received from First Wisconsin National Bank of Wausau as referred to in paragraphs 2 and 3 of said Item 3 were utilized for the purchase of common stock of the Issuer. However, it has now been determined that Mosinee Cold Storage, Inc. borrowed $50,000 on May 11, 1971, from First Wisconsin National Bank of Wausau at 5½% interest, secured by certain securities, certificates of deposit and insurance policies owned by it and related companies named in the Schedule 13D, and Wausau Cold Storage Company, Inc. borrowed $50,000 on June 29, 1971, from First Wisconsin National Bank of Wausau at 5½% interest, secured by certain securities, certificates of deposit and insurance policies owned by it and related companies named in the Schedule 13D. An undetermined portion of the proceeds of these loans were advanced by said corporations to Francis A. Rondeau and used by him to purchase shares of common stock of the Issuer. Both of the aforesaid loans have been fully repaid.

2. Further, with respect to Item 3, the undersigned, Rondeau & Company borrowed the aggregate sum of $307,000 at 6% annual interest from First Wisconsin National Bank of Milwaukee between May 10, 1971, and July 20, 1971, of which approximately $187,000 was used to purchase common stock of the Issuer in the name of Rondeau & Company and of Francis A. Rondeau and Francis A. Rondeau, Nominee. The above loans were secured by the collateral pledge to said Bank of shares of common stock of the Issuer and of other securities owned by Francis A. Rondeau and/or his associates identified in this Amended Schedule 13D. The loans from First Wisconsin National Bank of Milwaukee were paid, in full, on August 27, 1971, with proceeds received by Francis A. Rondeau and/or his associates from the sale of securities other than shares of common stock of the Issuer.

3. Further, with respect to Item 3, Francis A. Rondeau states and avers that subsequent to August 9, 1971, he has had discussions with representatives of First Wisconsin National Bank of Milwaukee and Marine National Exchange Bank of Milwaukee relative to he and/or his associates obtaining loans for the purchase of additional shares of common stock of the Issuer. No commitment or agreements relative to any such borrowing has been received or entered into.

4. With respect to Item 4, concerning the purpose of the transactions reported in the Schedule 13D, Francis A. Rondeau concluded during the early part of 1971 that the common stock of the Issuer was under-valued, that is, it was selling below its true value in the over-the-counter market and accordingly was a good investment for future

income and appreciation. Francis A. Rondeau and his associates commenced their purchases of the common stock of the Issuer early in April, 1971 with the intent of holding the stock for investment purposes. The price at which Francis A. Rondeau and his associates were able to purchase the common stock of the Issuer did not change materially in the months of April, May, June and July, and Mr. Rondeau and his associates continued to purchase common stock of the Issuer believing it to be a good investment. As more common stock of the Issuer was accumulated by Mr. Rondeau and his associates, they began to give some consideration to the composition of the Board of Directors of the Issuer and the persons who exercised actual control of the Issuer's affairs, but at no time prior to early August did Mr. Rondeau or his associates come to any definitive conclusions respecting control of the Issuer or give any serious consideration to any plan to attempt to obtain, or to affect, the control of the Issuer.

Upon being advised in early August of 1971 for the first time that their purchases of the Issuer's common stock were of sufficient magnitude to require the filing of this Schedule 13D, Mr. Rondeau and his associates consulted with legal counsel and learned that to file this Schedule, they would be required to state the purpose for which they had acquired and would continue to acquire common stock of the Issuer. Upon receiving additional advice on means that might be employed either to gain control of the Issuer or affect the composition of its Board of Directors, Mr. Rondeau and his associates for the first time gave serious consideration to making a tender offer for the purchase of additional shares of the common stock of the Issuer.

Consideration is currently being given to making a public cash tender offer to the shareholders of the Issuer at a price which will reflect current quoted prices for such stock, plus some premium. Consideration is also being given to asking other owners of the common stock of the Issuer

who may not choose to sell their shares to vote their shares in support of directors nominated or suggested by Mr. Rondeau and his associates. However, no plans to obtain proxies have been formulated, nor has it finally been determined whether or how to make a cash tender offer or solicit proxies. In the event control of the business of the Issuer is obtained, Francis A. Rondeau and his associates have no intention to liquidate the business of the Issuer, sell its assets, merge it with any other group or entity, or make any other major change in its business or corporate structure except consideration will be given to management changes in an effort to provide a Board of Directors which is more representative of and responsive to all of the shareholders, particularly those outside of present management, and in order to improve operating management for the purpose of assuring growth of stockholders' equity and payment of increased dividends.

All such purchases were effected through registered broker-dealers in the over-the-counter market at prevailing prices and were made over a period of time from April 5, 1971 through August 4, 1971.

5. With respect to Item 5, as of the date hereof, shares of common stock of the Issuer are owned of record and beneficially by Francis A. Rondeau and his associates as follows:

	Number of Shares of Record and Beneficially
Francis A. Rondeau	34,679
Mosinee Cold Storage, Inc.	11,020
Francis Rondeau, Incorporated	7,060
Wausau Cold Storage Company, Inc.	3,600
Francis A. Rondeau Foundation, Incorporated	1,957
Rondeau & Company	4,600
Ronco	264
Mosinee Cold Storage, Inc., Wausau Cold Storage Company, Inc., and Francis Rondeau, Incorporated, as participating Employers in The Emjay Corporation Master Profit Sharing Plan dated October 14, 1968	3,397
	66,577

Ronco is a limited partnership of which Francis A. Rondeau is the General Partner and his seven minor grandchildren are the limited partners. Its address is P.O. Box 10, Mosinee, Wisconsin 54455. This partnership operates as an investment entity purchasing and selling securities and other investments. Neither Ronco, nor any partner thereof, has, during the past ten years, been convicted in any criminal proceeding. None of the limited partners, all of them being minors, has any employment experience.

The Emjay Corporation Master Profit Sharing Plan is a qualified trust under Sections 401(a) and 501(a) of the Internal Revenue Code and by Joinder Agreement dated April 28, 1970, Mosinee Cold Storage, Inc., Wausau Cold Storage, Inc. and Francis Rondeau, Incorporated, became participating Employers thereunder for the benefit of their respective employees. Such trust was organized under date of October 14, 1968, and Stanley J. Matek whose address is 622 North Cass Street, Milwaukee, Wisconsin 53202, is the trustee of such Plan. George Rondeau, Marie Rondeau and Homer Ayvazzadeh are members of the Administrative Committee of such Plan. Mr. Matek resides at 2835 North Summit Avenue, Milwaukee, Wisconsin 53211, and his present principal occupation and employment is Executive Director of The Mental Health Planning Committee of Milwaukee County whose address is 8855 West Watertown Plank Road, Milwaukee, Wisconsin 53226. He has held such employment since July 1, 1969. From February 1, 1968, to July 1, 1969, Mr. Matek was Associate Director of the same agency. Prior to that time and since 1961, Mr. Matek was a seminary student at Sacred Heart Monastery, Hales Corners, Wisconsin, and did graduate study at Marquette University and the University of Wisconsin.

6. With respect to Item 6, from time to time, starting in the late summer of 1971 and continuing to the present time, Francis A. Rondeau and his associates have had telephone and personal discussions with other persons who own common stock of the Issuer. The names of such persons, as best as can be recalled by Mr. Rondeau and his associates, are listed below. Most of these discussions were originated by the other party to the discussion. They involved such matters as the true value of the common stock of the Issuer, the composition of its Board of Directors, the person or persons who exercise effective control of the Board of Directors, the possibility of changing control of the corporation and the future prospects of Mosinee Paper Company. In no instance did Mr. Rondeau or his associates solicit, ask for or obtain from any of the persons listed below, or any other shareholder of Mosinee Paper Company, any proxy or agreement to vote stock, agreement or understanding to purchase or sell stock, or agreement or

understanding to assist or cooperate with Mr. Rondeau or his associates. Nor have Mr. Rondeau or his associates obtained from any shareholder of Mosinee Paper Company any formal or informal, explicit or implicit, or other agreement or understanding, arrangement or contract respecting the securities of the Issuer. Accordingly, in this Item 6, as well as in other Items of this Schedule, no other persons or firms' names can or should be listed, nor can or should any contracts, arrangements or understandings be set forth. The persons referred to are:

Mr. Earl Bachman
203 Water Street
Mosinee, Wisconsin

Miss Margaret Dessert
614 4th Street
Mosinee, Wisconsin

Mr. Jack Altenberg
Route 5
Mosinee, Wisconsin

Mr. Orin Boeyink
301 Water Street
Mosinee, Wisconsin

Mr. William Yeshek
Minocqua
Wisconsin

Mr. Robert Seith
Gulf States Paper Company
Tuscaloosa, Alabama

I certify that to the best of my knowledge and belief, the information set forth in this statement is true, complete and correct.

September , 1971.

Francis A. Rondeau

Mosinee Cold Storage, Inc.

By

Francis A. Rondeau

Francis Rondeau, Incorporated

By

Francis A. Rondeau

Wausau Cold Storage Company, Inc.

By

Francis A. Rondeau

Rondeau Foundation

By

Francis A. Rondeau

Rondeau & Company

By

Francis A. Rondeau

Ronco

By

Francis A. Rondeau

The Emjay Corporation Master Profit Sharing Plan for the benefit of Employees of Mosinee Cold Storage, Inc., Wausau Cold Storage Company, Inc., and Francis Rondeau, Incorporated

By

Stanley J. Matek, Trustee

Exhibit H

MOSINEE PAPER CORPORATION

August 27, 1971

Dear Fellow Shareholder:

Your Board of Directors was recently informed that Francis A. Rondeau, a Mosinee cheese dealer, has acquired approximately 8% of your Company's common stock. Mr. Rondeau was required by federal law to disclose information about his purchases in a public filing with the Securities and Exchange Commission and with the Company after acquiring 5% of your Company's stock. By not filing in late June, when he had acquired 5%, he withheld the information to which you were entitled for more than two months, in violation of federal law. His tardy filing, when finally received on August 26, 1971, disclosed information which we want to bring to your attention.

Mr. Rondeau says that he felt in early 1971 that your Company's stock was undervalued in the market and represented a good investment vehicle for future income and appreciation. Accordingly, he purchased Mosinee shares in the over-the-counter market. He now proposes to acquire additional stock in an attempt to take over your Company and is currently considering a cash tender offer to Mosinee shareholders at a price "which will reflect current quoted prices for such stock with some premium added". In the event he is successful in his attempted take-over he intends to consider changes in your Company's management, although he claims that he does not intend to liquidate Mosinee, sell its assets, merge it or make any other major changes in its business or corporate structure. A copy of his complete statement to the Securities and Exchange Commission is available at the Company's offices.

Your management has strived over the years to make Mosinee a progressive company that has continued to grow

and provide income and capital appreciation for you, its owners, and jobs for our loyal employees. We think their combined efforts and expertise are responsible for making your Company a respected and profitable factor in the paper industry. On the other hand, we are not aware that Mr. Rondeau has any knowledge or working experience in the pulp and paper industry. To the best of our knowledge, his business background is largely limited to the cheese business. While we agree that recent market prices have not reflected the real value of your Mosinee stock, we see little in Mr. Rondeau's background that would qualify him to offer any meaningful guidance to a Company in the highly technical and competitive paper industry.

We think it important for you to know that there is no cash tender offer now in existence, nor do we know whether Mr. Rondeau will ever make such an offer. Other than the information disclosed in his filing we have no knowledge of any such plans. You can be sure that if and when he does make a tender offer your Board will carefully analyze it and communicate with you.

Your Board of Directors thought it important to provide you with this information as soon as possible. Please be assured that you will be kept apprised of further developments.

Yours very truly,

MOSINEE PAPER CORPORATION

/s/ John E. Forester
JOHN E. FORESTER
Chairman of the Board

/s/ C. Scholtens
C. SCHOLTENS
President

Exhibit I

MOSINEE PAPER CORPORATION

September 2, 1971

Dear Fellow Shareholder:

In a continuing effort to keep you informed of activities connected with the recent action of F. A. Rondeau and his associates, we have attached a copy of a news release distributed to the media today. The release explains a complaint filed by your Corporation in the U.S. District Court, Madison, Wisconsin, against Mr. Rondeau and his associates.

It will interest you to know that the Wisconsin Valley Trust Company, Wausau, Wisconsin, has also filed suit against Mr. Rondeau, his associates and the First Wisconsin National Bank of Wausau and Milwaukee. The Wisconsin Valley Trust claims that by filing more than two months late, Rondeau deprived you and the investing public of information that could have affected decisions to buy, sell or hold Mosinee stock. The Wisconsin Valley Trust Company sold stock for a trust it manages at a lower price than they would have had they known of Rondeau's activities.

We will communicate further developments in our case against Mr. Rondeau as they occur.

Yours very truly,

MOSINEE PAPER COMPANY

/s/ John E. Forester
JOHN E. FORESTER
Chairman of the Board

/s/ Clarence Scholtens
CLARENCE SCHOLTENS
President

NEWS RELEASE

Mosinee, Wisconsin. Mosinee Paper Corporation announced today it has filed suit in U.S. District Court, Madison, Wisconsin, against Francis A. Rondeau and his associates of Mosinee, Wisconsin. Also named in the suit as defendants were the First Wisconsin National Bank of Wausau and First Wisconsin National Bank, Milwaukee.

In the suit, Mosinee Paper Corporation alleges that Rondeau and his associates failed to comply with provisions in the Securities Exchange Act of 1934. Rondeau and his associates recently notified the Securities and Exchange Commission (SEC) and Mosinee Paper Corporation that they had acquired 8% of the Mosinee Common Stock. Mosinee officials claim that Rondeau filed the information more than two months late—a violation of the Securities Exchange Act.

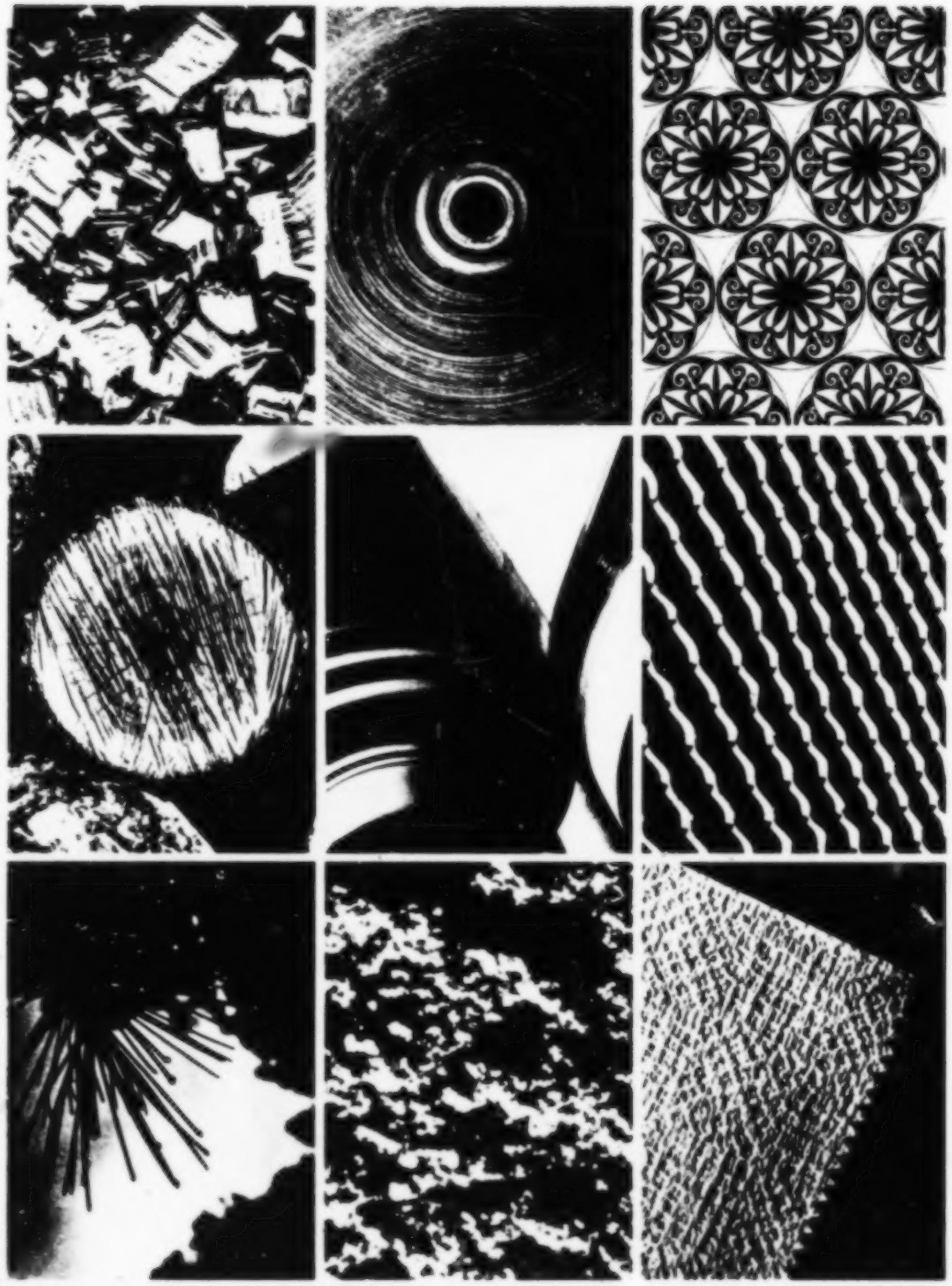
Mosinee President Clarence Scholtens explained, "An individual has ten days to notify the SEC following the acquisition of 5% of a publicly held corporation. In withholding this information," said Scholtens, "Rondeau deprived Mosinee shareholders and the investing public of information which, of course, would affect the value of the stock. It may have affected our shareholders in their decision to buy, sell or hold our stock."

The suit also raises questions about the information included in the report concerning persons associated with Rondeau and their purpose in acquiring Mosinee stock.

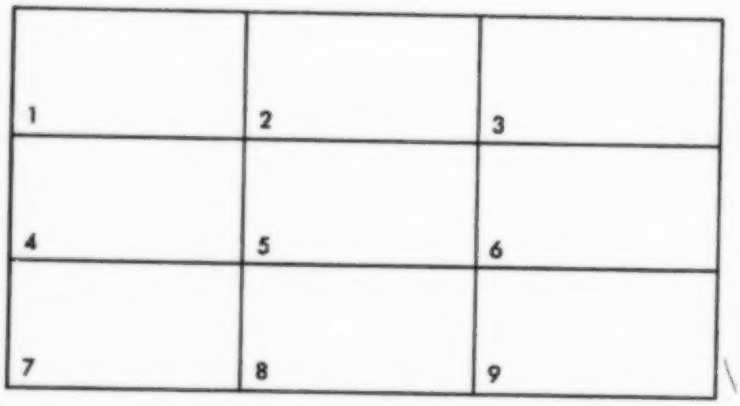
Judge James E. Doyle today ordered Rondeau and his associates to show cause why they should not be enjoined from business activities involving the improperly acquired stock, including their right to vote the stock and the use of the stock as collateral to secure additional stock.

9/2/71

Exhibit K



Mosinee Paper Mills Company Annual Report
1970



Cover illustration: 1) Jack pine needles; 2) Pulpwood — oak log; 3) pulpwood chips; 4) Natural kraft pulp; 5) Paper machine press which removes water from pulp; 6) Reel of kraft paper; 7) Creped paper for toweling; 8) Flameproof paper in honeycomb form for building partitions; 9) Flexographic printing on foil laminated to natural kraft.

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1970
Financial Highlights

	1970	1969
Operations:		
Net sales	$30,650,718	$29,453,032
Depreciation, amortization and depletion	1,565,615	1,607,758
Net earnings before income taxes	2,152,526	2,648,403
Income taxes	1,132,620	1,358,119
Consolidated net earnings	1,019,906	1,290,284
Working Capital:		
Current assets	$ 8,889,779	$ 8,352,592
Current liabilities	2,931,444	3,262,507
Working capital	5,958,335	5,090,085
Current ratio	3 to 1	2.6 to 1
Long-term Indebtedness:		
5% First Mortgage Promissory Notes	$ 3,600,000	$ 3,900,000
Bank loans	129,223	147,514
Other	25,000	10,000
Employees:		
Average number of employees	900	898
Investment for each employee	$ 26,690	$ 26,898
Wages and salaries	8,186,744	7,610,540
Stockholders:		
Number of stockholders	1,697	1,691
Book value per share	$ 19.77	$ 19.17*
Depreciation, amortization and depletion per share	1.97	2.02*
Income taxes per share	1.43	1.70*
Other taxes per share	1.06	1.08*
Net earnings per share	1.28	1.61*
Dividends paid per share	.675	.525*

* Adjusted to reflect 100% stock dividend effected in form of 2 for 1 stock split during year ended May 31, 1970.

BEST COPY AVAILABLE

1970
To the Shareholder

Mosinee Paper Mills Company achieved record sales for the ninth consecutive year. Earnings, however, were depressed for the first time during this period. Temporary business curtailment occurred during the second and fourth quarters. In addition, substantial increases in labor and raw material costs, taxes and freight could not be fully covered by price increases. Continuing inflationary pressures, along with development costs associated with our flexible packaging operations at the Converted Products Division, and experimental costs at Celluponic Systems, Inc., continued to have a significant depressing effect on earnings.

Sales for 1970 amounted to $30,650,718, an increase of $1,197,686 or 4 percent. Net earnings were $1,019,906, equivalent to $1.28 per share as compared with $1,290,284 and $1.61 per share in 1969, a decrease of 21 percent. Dividends paid during the year amounted to 67½¢ per share, an increase of 15¢ over the 52½¢ per share paid in 1969. These figures are adjusted to reflect the 100 percent stock dividend approved by the shareholders in September, 1969.

Celluponic Systems, Inc., an experimental agricultural innovation, was organized to develop equipment for the commercial application of mulch paper in large scale plantings. Prototype machines were developed and experimental plantings have been conducted in a variety of climatic and soil conditions. Results to date do not indicate that the system has significant economic advantages over present agricultural planting practices. Manpower savings can be realized through mechanical planting with mulch but present labor costs in areas tested are not sufficiently high to justify capital investment requirements. Mulching experiments are being continued on a limited basis. Reduction in Celluponic's operations will help to minimize the earnings drain.

The sale of protective food papers and laminated products manufactured at our Converted Products Division made earnings contributions. Flexible packaging operations at Columbus, however, incurred significant costs associated with trial runs which are necessary for qualification in a number of sophisticated flexible packaging markets. Recent trials have been successful and commercial rotogravure and flexographic printing orders are in production. Personnel additions at the Converted Products Division have added experienced and highly competent marketing skills to our sales organization. To reinforce product development in coating, laminating and printing, we have added research personnel and laboratory equipment.

The operation of Celluponic Systems, Inc. and the Converted Products Division had an adverse effect on earnings amounting to 42¢ per share in the past year.

In order to improve communications between the shareholders, management and the employees of Mosinee Paper Mills Company, your Board of Directors authorized a quarterly publication, "The Mosinee Millstream." This publication is circulated to more than 2,700 shareholders and employees, and contains our quarterly financial report as well as news about Mosinee people and products.

To provide a firm foundation for future growth, a recent plan to reorganize the company on a divisional basis has been approved. Complete studies were made and recommendations to the Board of Directors have been accepted and are presently being implemented. A decentralized organization with divisional responsibility and accountability will result in improved budgeting, cost analysis and control. Divisional profit centers should provide greater operating efficiencies.

One of the major challenges of the Seventies is individual and corporate environmental concern. Industry in general and the paper industry in particular have been on the firing line relative to air and water pollution abatement. Certainly we recognize that our industry does contribute to environmental pollution. However, Mosinee and the paper industry have been working on solutions to these problems for many years. We will devote another section of the report to a discussion of our environmental policies and our work in the improvement of air and water quality.

Mosinee has undergone a great change in the last decade — major expansions were completed at Bay West, and another paper machine for the production of high quality industrial and converting papers was erected at Mosinee. In 1966 at Columbus, we added a protective food products line and began the development of laminated papers, later adding flexible packaging equipment. Mosinee's sales and earnings more than doubled in the Sixties. As we enter a new decade, we feel confident that in spite of temporary reversals, we have an organization competent to meet "the challenge of the Seventies."

John E. Forester
Chairman of the Board

President and
Chief Executive Officer

1970
Directors
Officers

DIRECTORS

HENRY C. CRANDALL

CARL A. von ENDE

JOHN E. FORESTER
Attorney and
Managing Trustee

BIDWELL K. GAGE
Vice President,
Bay West Paper Company

C. M. GREEN

ROBERT V. JONES
President and General Mgr.,
Marathon Electric Mfg. Corp.

JOHN A. McPHERSON

CURT PEACOCK
President and General Mgr.,
Calwis Company
President,
Green Bay Plastics, Inc.

STANLEY L. REWEY
Executive Vice President
Marshall & Ilsley Bank

GEORGE L. RUDER
Attorney, Ruder & Staples, S.C.

CLARENCE SCHOLTENS

WILLIAM J. SERVOTTE
President,
Bay West Paper Company

STANLEY F. STAPLES, JR.
Attorney, Ruder & Staples, S.C.

RONALD A. WESTGATE
President,
Wausau Oil Company

OFFICERS

JOHN E. FORESTER
Chairman of the Board

JOHN A. McPHERSON
President and
Chief Executive Officer

CLARENCE SCHOLTENS
Executive Vice President

WILLIAM J. SERVOTTE
Vice President

HENRY C. CRANDALL
Vice President, Research
and Development

CARL A. von Ende
Vice President, Manufacturing

E. C. BATZER
Secretary

R. W. SCHMIDTKE
Treasurer

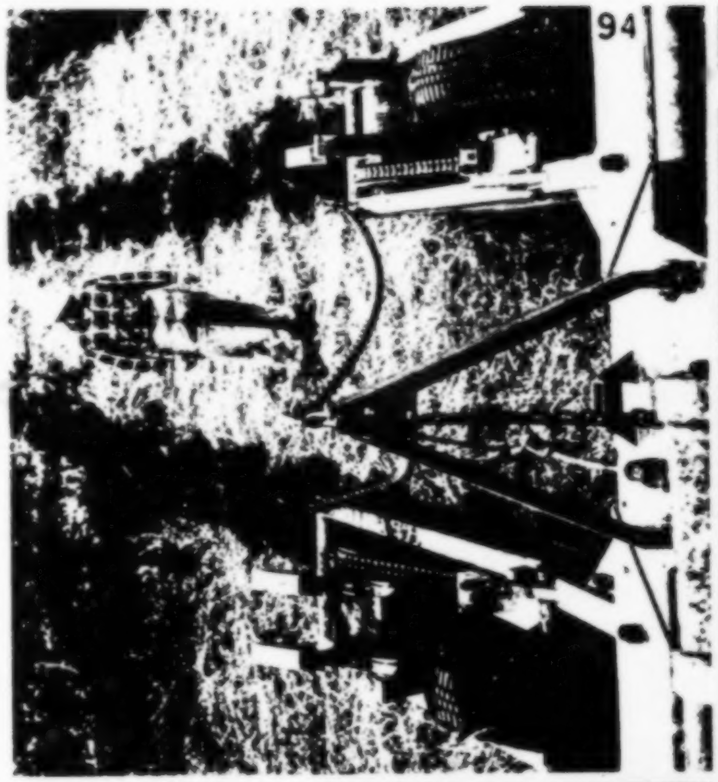
1970

Inflationary pressures which have been all too apparent in other aspects of corporate affairs also made themselves felt in the company's Forest Operations and in the woodlands of our suppliers. Higher wages for wood labor and higher price tags on logging equipment brought about the inevitable result of higher production costs and an increase in pulpwood prices. Along with freight rate increases and higher handling costs, inadequate car supplies and poor rail service further accelerated the delivered cost of pulpwood.

Additional stumpage reserves were acquired in Minnesota and the Black Hills of South Dakota by successful bids on several public forests timber offerings. These volumes will supplement our industrial forest production in Wisconsin which now provides up to 25% of our total annual pine requirements.

Forest fire and insect infestation problems were at a minimum during the past year and industrial forest operations continued to make a substantial contribution to corporate earnings.

1) Forester Bill Kauth plots operations on a map of Mosinee's 86,000-acre Industrial Forest at Solon Springs, Wisconsin.
2) Observing a scarifier operation is woods foreman, Bill Wilcox. 3) Forest Manager Terry Michal operates a rubber-tired "skidder."



1970
Research and Development

Mosinee's Value Engineering concept is unique in the paper industry. We define Value Engineering as the scientific method of accomplishing a specific function at the lowest possible end cost. The VE concept is heavily dependent on our ability to accurately determine a customer's needs and manufacturing problems, and develop an efficient solution. Our Research and Development Department has continued to direct its efforts toward the development of new Value Engineered specialty papers and treatments.

NEVERMOLD E-35, a paper with outstanding physical and mold-resistant properties and a Mosinee MG greaseproof paper were developed this year. NEVERMOLD E-35 is working well in the wrapping of facial and hand soap. Our machine-glazed greaseproof paper has important applications in food packaging, release coating and metal interleaving.

These and other specialty papers were first produced on our laboratory paper machine which basically duplicates the manufacturing techniques of our large paper machines.

A substantial portion of our R&D work was directed this year toward the development of sophisticated coatings and laminations for our Converted Products Division. For this development, our laboratory coater-laminator, installed last year, is a most effective tool.

In addition, our research and development staff has provided technical assistance to our converting operations in their manufacture and development of coated, laminated and printed papers.

U. S. and foreign patents applied for last year have been granted covering the manufacture of certain chemically treated, fungus-resistant papers. This gives us broad and important protection for some of our specialty papers and will allow us to explore new marketing areas.

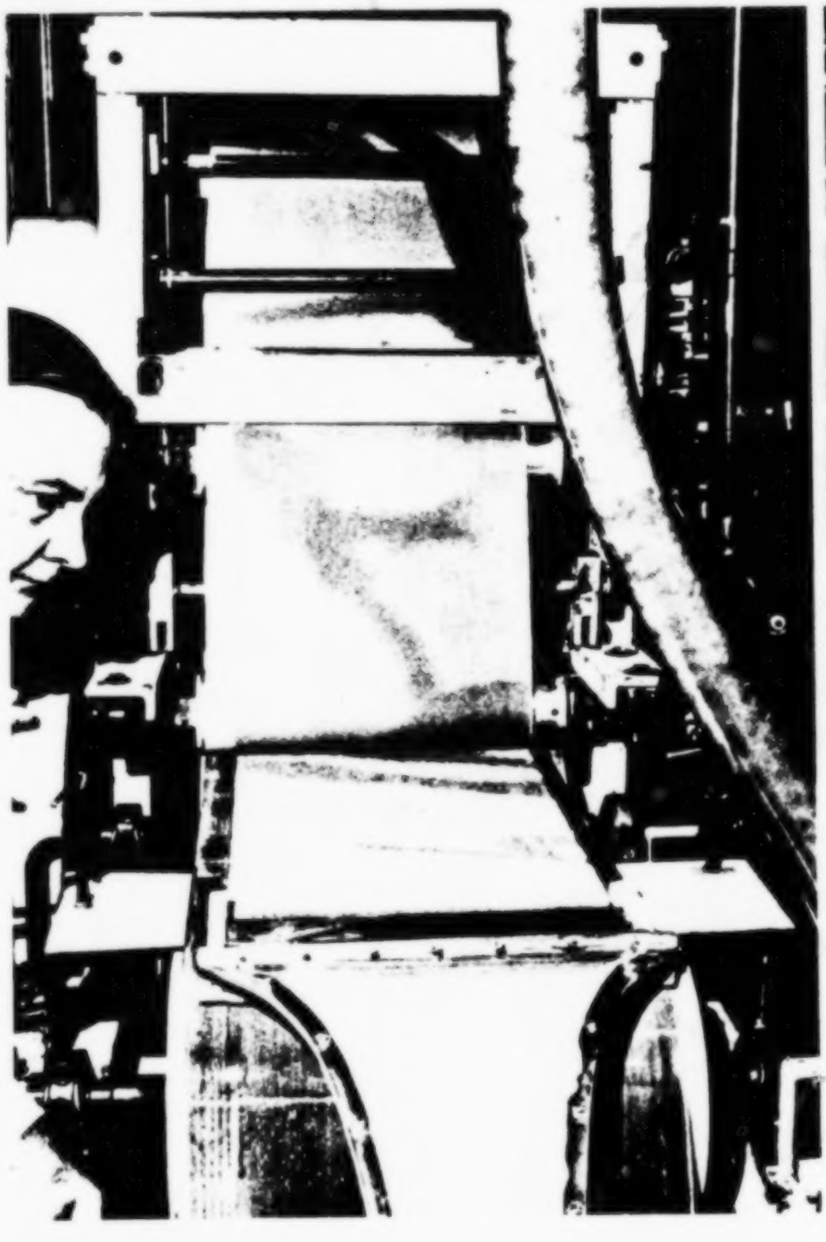
1970
Manufacturing Pulp and Paper

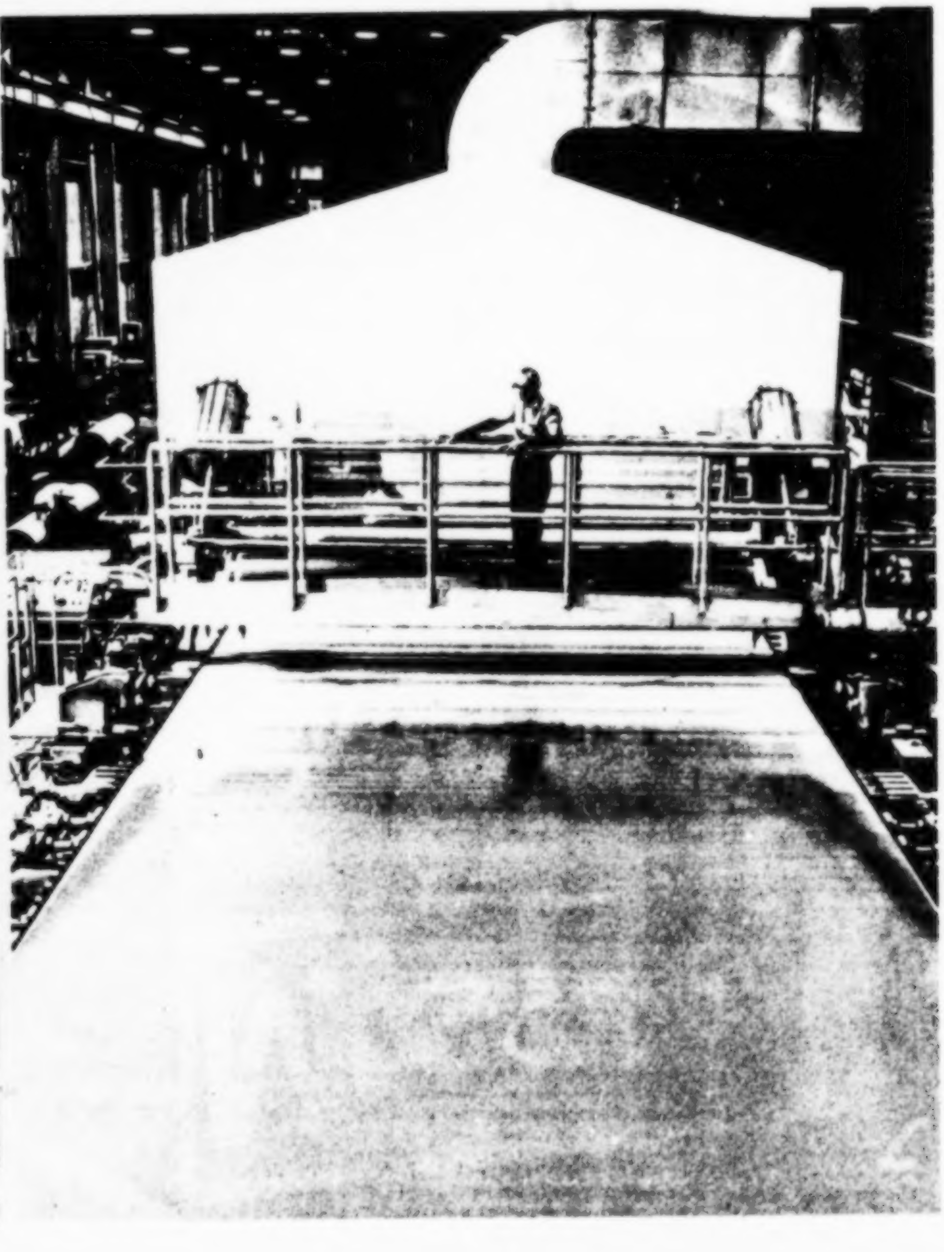
The addition of an air-flow dryer on our No. 3 paper machine has improved production efficiency on many of our creped paper specifications. The dryer has also accounted for improved quality . . . a continuing and important manufacturing objective.

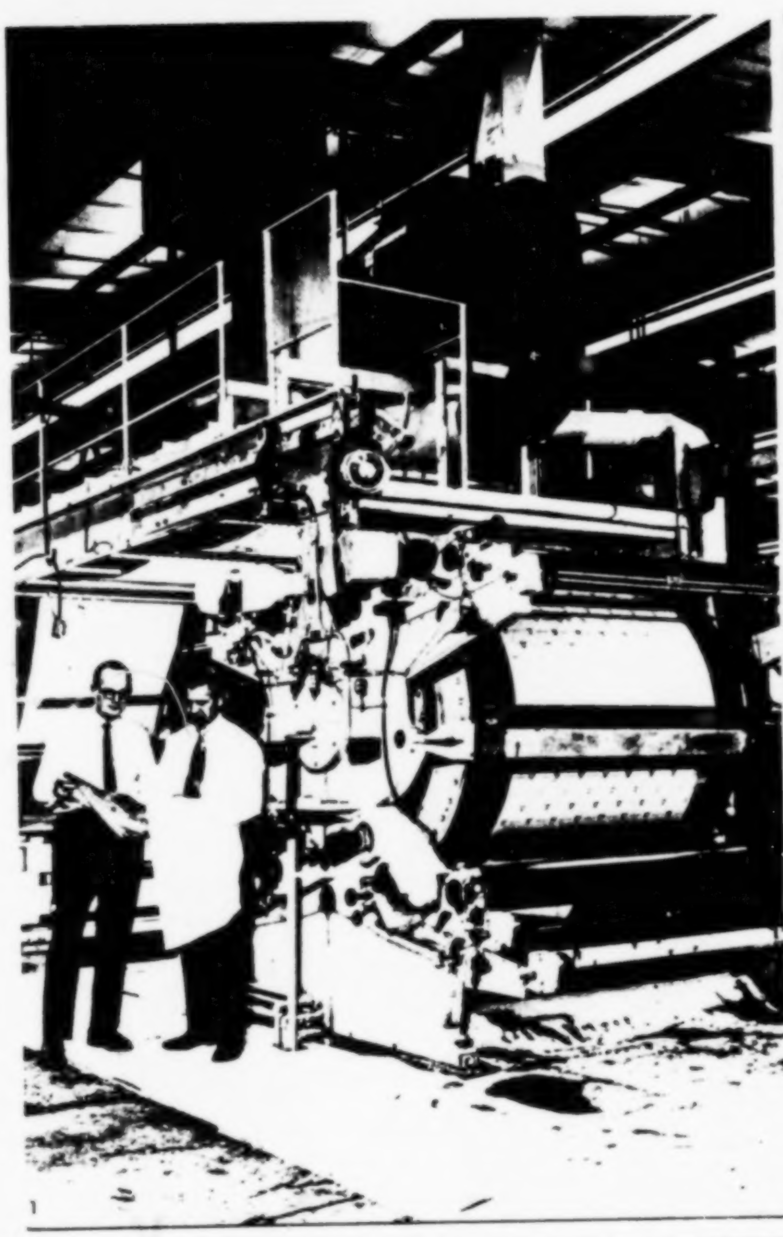
On our No. 4 paper machine, we have installed a system for the monitoring and control of moisture content and basis weight. We are now carefully evaluating this system and its instrumentation which includes a small digital computer. We anticipate improved quality on our machine-glazed papers and greater machine efficiency when the system is functioning completely.

With the assistance of our Research and Development Department, a particle tester was installed in our Finishing Department. Mosinee electrical papers, used in distribution transformers, must be free of minute conductive particles. The particle tester seeks out and identifies any conductive matter in our paper as it is being rewound.

1) Skilled machine tenders, like Jim Bradley pictured here, operate Mosinee's four paper machines which manufacture hundreds of different specialty papers each year. 2) Research technician Len Hevey duplicates the performance of our paper machines on this miniature laboratory pilot machine.



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FREEZER PAPER
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FREEZER PAPE

1970 Converting

The Bay West operation has continued a program for improvements in towel quality and increased efficiency in manufacturing and in materials handling. Bay West has also made considerable progress in the merchandising of Mosinee bath towels. In addition, demand for hand towels remained strong this year.

A new plastic and steel towel dispenser has been developed and will be announced to distributors soon.

Calwis sales of windshield cleaning chemicals, windshield towels and plastic products increased this year. We also began an expansion and modernization of Calwis manufacturing operations. Blow-molded bottles produced by Green Bay Plastics Inc. will be filled faster and more efficiently on additional Calwis production lines. Improvements in the Calwis screening process are also in progress. Product labels are applied on the plastic bottles in one- or two-color silk screen. Plans are also underway to increase (plastics) manufacturing space at this operation.

Our Converted Products Division has produced and sold increasing quantities of wax laminated kraft papers for ream, roll and skid wrap. The line of protective food wraps produced at Columbus has been expanded to create a more complete Mosinee product line for paper distributors. Flexible packaging trials on our eight-color rotogravure press and our four-color flexographic press (pictured at left) have been successful and our production backlog is increasing. We have printed and coated such varied materials as cellophane, film, kraft paper and foil mounted paper. Our large presses are producing materials of impressive quality.

Columbus flexible packaging products have been used in tablet covers, candy wraps, gift wraps, dry milk packaging and pouches for food portion packs.

1970 Marketing

In the past a single marketing and sales organization has been responsible for the sale of industrial papers, protective food papers and flexible packaging materials. There are major differences in the various markets — selling techniques required, product knowledge and channels of distribution. Therefore to maximize marketing strength and individual abilities, the Mosinee marketing organization has been separated into three sales teams: Flexible packaging, industrial papers and protective food papers. This important change will focus more effectively the effort of our marketing and sales people and increase our sensitivity as a company to the ever changing demands of our customers. Bay West and Calwis products will continue to be sold by separate sales organizations.

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1) Production manager, Joe Lawlor, and vice president and general manager, Jim Stelow, of the Converted Products Division, examine a flexographic printing run. 2) Don Belville, sales manager of our protective food products line explains Mosinee's coast-to-coast distribution to a locker plant owner at a national convention.

1970
The Environment

Pollution is a people problem.

It is the by-product of unexcelled growth and development that has made our country the strongest in the world.

As we enter the Seventies, it is evident that we must solve our environmental problems . . . while maintaining the vigorous economy that has given the United States a standard of living second to none. Our approach to environmental problems, if we are to be successful, must include liberal doses of unemotional reasoning and a personal commitment from all Americans.

Pulp and paper mills do contribute to the pollution of our air and water. However, we began working on environmental problems as a company and an industry years ago . . . before environmental concern was "in vogue." In 1960, at a cost of one half million dollars, we installed a five-story electrostatic precipitator at our pulp and paper mill to remove particulate matter from our "industrial smoke." All Mosinee paper machines are equipped and have been for sometime with save-alls which prevent fibers from escaping to the Wisconsin River. Water sampling is conducted daily and checks are made on dissolved oxygen and b.o.d. (biological oxygen demand). Chemicals from our digesters are recovered and reused.

But we have much more to do.

Early this year we hired a nationally known environmental engineering firm to study air pollution problems at our pulp and paper mill. Phase II of an extensive study began in July when engineers sampled our stack discharge for particulate matter and odor components. Upon analyzing the content of the samples, recommendations for solutions to our air problems will be made. We are also studying, with Mosinee city officials, the feasibility of combining city sewage treatment with the treatment of mill effluent.

1970
Financial Report

The sole purpose of this report is to give present stockholders and employees information about the company. This is not a representation, prospectus or circular in respect to any stock of any corporation, and is not transmitted in connection with any sale or offer to sell or buy any stock or security now or hereafter to be issued, or with any preliminary negotiations for such sale.

Consolidated Statement of Financial Condition May 31, 1970-1969

Assets

	1970	1969
Current Assets:		
Cash	$ 434,914	$ 398,852
Marketable securities		592,226
Accounts receivable	2,491,688	2,614,128
Inventories (valued at cost or market, whichever lower, except pulpwood valued under the last-in, first-out method)	5,448,310	4,384,550
Other current assets:		
Estimated income tax refunds	146,300	
Other	368,567	362,836
Total current assets	$ 8,889,779	$ 8,352,592
Investments — At cost	$ 50,833	$ 50,833
Fixed Assets — At cost:		
Depreciable property: (Note 2)		
Buildings	$ 4,993,002	$ 4,879,535
Machinery and factory equipment	24,369,563	23,823,497
Other equipment	210,327	206,477
Office furniture and machines	351,617	331,914
Totals	$29,924,509	$29,241,423
Less — Accumulated depreciation	17,121,025	15,892,284
Net depreciated value	$12,803,484	$13,349,139
Timber and timberlands	520,979	516,010
Water power rights	128,966	128,966
Land and land improvements	106,055	105,144
Construction in progress	286,706	371,345
Total fixed assets	$13,846,190	$14,470,604
Deferred Charges	$ 274,851	$ 250,301
Other Assets	$ 959,594	$ 1,030,658
TOTAL ASSETS	$24,021,247	$24,154,988

The accompanying notes are an integral part of this statement.

Liabilities

	1970	1969
Current Liabilities:		
Principal payments due within one year on 5% First Mortgage Promissory Notes	$ 300,000	$ 300,000
Notes payable — Banks:		
Secured (current maturities)	18,300	17,250
Unsecured	200,000	
Accounts payable	1,601,871	1,497,546
Accured and other liabilities	811,273	1,005,711
Accrued income taxes		442,000
Total current liabilities	$ 2,931,444	$ 3,262,507
Long-term Indebtedness: (Note 3)		
5% First Mortgage Promissory Notes, due May 1, 1983 (less principal payments due within one year shown above)	$ 3,600,000	$ 3,900,000
Notes payable—Banks—Secured (portion due after one year)	129,223	147,514
Other	25,000	10,000
Total long-term indebtedness	$ 3,754,223	$ 4,057,514
Total liabilities	$ 6,685,667	$ 7,320,021
Reserves: (Note 4)		
Deferred estimated income tax liability	$ 1,354,718	$ 1,209,255
Deferred income — Investment tax credit	268,884	297,682
Total reserves	$ 1,623,602	$ 1,506,937
Minority Interest	$ 62,192	$ 50,743

Stockholders Equity

	1970	1969
Preferred Stock (no designation as to par or stated value):		
Authorized — 1,000,000 shares		
Issued and outstanding — None		
Common Stock - $5.00 par value per share:		
Authorized — 2,500,000 shares (800,000 shares in 1969)		
Issued — 991,109 shares (495,553⅓ shares in 1969)	$ 4,955,533	$ 2,477,767
Capital Contributed Other Than For Shares	483,975	461,456
Earnings Retained	11,362,579	12,857,385
Total	$16,802,087	$15,796,608
Less — Treasury stock (199,024⅔ shares in 1970 and 97,326⅓ shares in 1969)	1,152,301	519,321
Total stockholders' equity	$15,649,786	$15,277,287
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	$24,021,247	$24,154,988

The accompanying notes are an integral part of this statement.

Consolidated Statement of Operations

	1970	1969
Net sales	$30,650,718	$29,453,032
Cost of sales	24,671,622	23,376,415
Gross profit on sales	$ 5,979,096	$ 6,076,617
Operating expenses:		
Selling and advertising expense	$ 1,799,842	$ 1,645,935
Administrative expense	1,889,586	1,627,358
Total operating expenses	$ 3,689,428	$ 3,273,293
Profit from operations	$ 2,289,668	$ 2,803,324
Other income	114,448	100,587
	$ 2,404,116	$ 2,903,911
Other deductions	231,741	239,426
Net earnings before provision for income taxes and minority interest	$ 2,172,375	$ 2,664,485
Provision for income taxes — (Note 4)	1,132,620	1,358,119
Net earnings before minority interest	$ 1,039,755	$ 1,306,366
Minority interest in earnings of subsidiary companies	19,849	16,082
Consolidated net earnings	$ 1,019,906	$ 1,290,284
Earnings per share of common stock outstanding — (Note 6)	$ 1.28	$ 1.61

Consolidated Statement of Earnings Retained

	1970	1969
Consolidated earnings retained at the beginning of the year	$12,857,385	$11,985,017
Plus — Consolidated net earnings for the year	1,019,906	1,290,284
	$13,877,291	$13,275,301
Less:		
Dividends paid on common stock ($.675 per share in 1970 and $.525 per share in 1969)	$ 534,897	$ 417,916
Transfers to common stock to reflect 100% stock dividend effected in form of stock split	1,979,815	
	$ 2,514,712	$ 417,916
Consolidated earnings retained at the end of the year	$11,362,579	$12,857,385

NOTE — Earnings per share and dividends paid per share have been adjusted to reflect 100% stock dividend effected in form of 2 for 1 stock split during year ended May 31, 1970.

The accompanying notes are an integral part of these statements.

Notes to Consolidated Financial Statements

(1) — PRINCIPLES OF CONSOLIDATION: The accompanying financial statements consolidate the accounts of Mosinee Paper Mills Company and all subsidiaries. Intercompany transactions and accounts have been eliminated. The excess of purchase price over net book value of Calwis Company stock acquired in May, 1968, in the amount of $279,285, is not being amortized since no diminution of value is evident.

(2) — DEPRECIABLE FIXED ASSETS: Depreciation charged against consolidated income totaled $1,271,273 for the year ended May 31, 1970 and $1,328,064 for the year ended May 31, 1969. The companies claim accelerated depreciation for income tax purposes while utilizing the straight-line method for accounting purposes. Both provisions are based on the use of U. S. Treasury Department guideline lives.

(3) — LONG-TERM INDEBTEDNESS: The 5% First Mortgage Promissory Notes, due May 1, 1983, are secured by a first mortgage on substantially all of the property of Mosinee Paper Mills Company, except timberlands; also pledged is the stock of the company's wholly-owned subsidiary, Bay West Paper Company.

The loan agreement provides for semi-annual principal payments of $150,000 on November 1 and May 1 of each year. Other indenture provisions, among which are requirements relating to working capital, limitations with respect to dividend payments and acquisition of the company's capital stock, had been complied with at May 31, 1970.

(4) — RESERVES. The reserve for deferred estimated income tax liability results from the use of accelerated depreciation methods for income tax purposes in excess of straight-line provisions for accounting purposes. The provision for income taxes includes deferred Federal income taxes resulting therefrom in the approximate amount of $151,500 for 1970 and $95,000 for 1969.

During the year ended May 31, 1967, the companies adopted the full flow-through method of taking the investment credit into income and elected to amortize the accumulated prior years' credits in accordance with the method previously in effect. The total credits reflected as a reduction in the provision for Federal income taxes, in accordance with these practices, totaled $60,006 for 1970 and $95,979 for 1969.

(5) — PENSION PLANS: Effective as of the beginning of the year ended May 31, 1970, the companies adopted new retirement programs replacing all previous plans, except the Mosinee Savings Plan for hourly workers of Mosinee Paper Mills Company, which was continued as in prior years. As a result of these changes, pension costs for both the current year and for past service were increased. The unfunded liability under the plans amounted to approximately $2,190,000 at May 31, 1970. Pension costs for the current year aggregated $434,542, of which $82,910 was for past service.

(6) — STOCK OPTION PLAN: Mosinee Paper Mills Company has reserved common stock, not to exceed an aggregate of 30,000 shares (adjusted for 100% stock dividend in year ended May 31, 1970), under a Qualified Stock Option Plan which provides for the granting of options at 100% of the fair market value at date of grant. At May 31, 1970, options had been granted for 25,984 shares in accordance with the terms of the plan; at that same date, options for 2,190 shares had been exercised and 1,764 optioned shares had terminated.

Earnings per share computations have been made in accordance with Accounting Principles Board Opinion No. 15 issued in May, 1969, as it relates to employee stock options.

(7) — CONTINGENCIES AND COMMITMENTS: As of May 31, 1970, Mosinee Paper Mills Company and its subsidiaries had unexpended balances totaling approximately $185,000 under approved authorizations for plant extension and improvement projects.

Consolidated Statement of Source and Application of Funds

	1970	1969
Source of funds:		
Consolidated net earnings	$1,019,906	$1,290,284
Depreciation, amortization and depletion	1,565,615	1,607,758
Deferred estimated income taxes (net)	144,042	95,274
Other changes and reclassifications (net)	47,896	51,096
	$2,777,459	$3,044,412
Application of funds:		
Additions to plant and equipment, net of book value of dispositions	$ 677,968	$1,202,091
Additions to turn-towel cabinet leases and other intangibles	252,349	183,552
Reduction in long-term indebtedness	303,291	317,245
Purchase of company stock for treasury	139,900	
Payment of cash dividends	534,897	417,916
Other changes and reclassifications (net)	804	170,459
	$1,909,209	$2,291,263
Increase in net working capital	$ 868,250	$ 753,149

The accompanying notes are an integral part of this statement.

Accountants Certificate

To The Board of Directors

Mosinee Paper Mills Company

We have examined the Consolidated Statement of Financial Condition of Mosinee Paper Mills Company and subsidiary companies as of May 31, 1970 and May 31, 1969, and the Consolidated Statements of Operations, Earnings Retained and Source and Application of Funds for the years then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the financial statements referred to above present fairly the financial position of the companies at May 31, 1970 and May 31, 1969, and the results of their operations and source and application of funds for the years then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

WIPFLI, ULLRICH & COMPANY

Certified Public Accountants

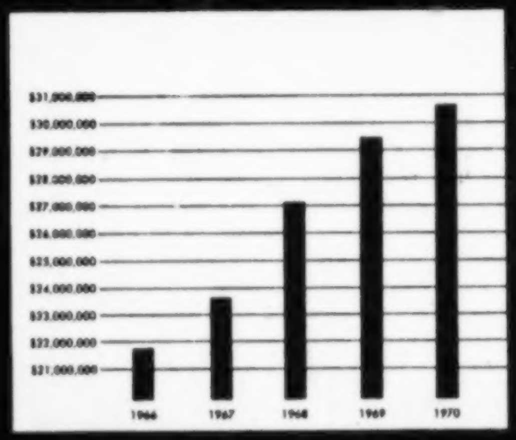
July 17, 1970

Wausau, Wisconsin

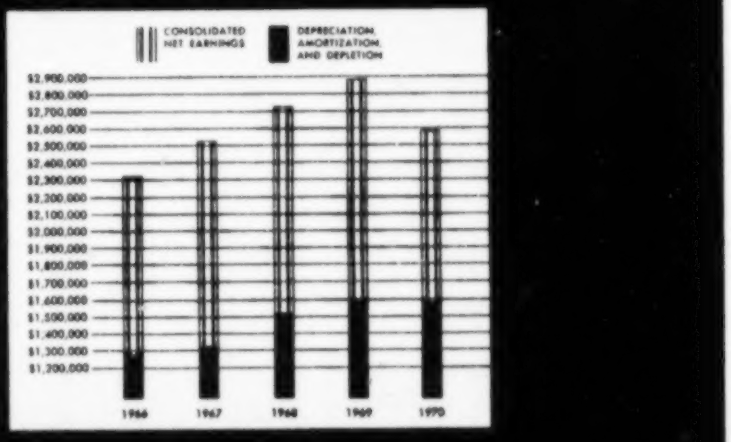
	1970	1969	1968	1967	1966	1965	1964	1963	1962	1961
Operations: (In thousands)										
Net sales	$30,651	$29,453	$27,069	$23,709	$21,956	$19,490	$17,104	$16,217	$15,599	$13,033
Earnings before depreciation, amortization, depletion and income taxes	3,718	4,256	3,788	3,199	3,189	2,803	2,632	2,645	2,478	1,994
Depreciation, amortization and depletion	1,566	1,608	1,508	1,337	1,291	1,283	1,011	1,001	975	930
Net earnings before income taxes	2,152	2,648	2,280	1,862	1,898	1,520	1,621	1,644	1,503	1,064
Income taxes	1,132	1,358	1,083	694	887	699	811	850	763	534
Consolidated net earnings	1,020	1,290	1,197	1,168	1,011	821	810	794	740	530
Financial Condition: (In thousands)										
Working capital	5,958	5,090	4,327	4,121	6,061	5,295	4,213	4,744	3,910	3,597
Plant property and equipment (net)	13,846	14,471	14,657	14,447	12,265	12,255	10,539	8,214	8,435	8,549
Expenditures for plant and equipment	714	1,229	1,400	3,391	1,107	2,851	3,183	652	741	967
Long-term indebtedness	3,754	4,058	4,365	4,681	4,800	5,000	3,190	2,010	2,190	2,370
Employees:										
Average number of employees	900	898	854	803	755	707	675	670	658	641
Investment for each employee	26,690	26,898	26,979	27,690	28,290	27,922	25,524	22,785	22,439	21,883
Wages and salaries (In thousands)	8,187	7,611	6,962	6,066	5,655	5,103	4,838	4,664	4,444	3,765
Stockholders:										
Number of stockholders	1,697	,691	1,551	1,509	1,463	1,460	1,399	1,355	1,341	1,249
Net earnings per share*	1.28	1.61	1.51	1.47	1.27	1.03	1.02	1.00	.93	.66
Dividends paid per share*	.675	.525	.50	.475	.45	.425	.425	.425	.40	.375
Book value per share*	19.77	19.17	18.09	16.77	15.78	14.96	14.36	13.77	13.20	12.68

* Adjusted for 2 for 1 stock splits in both 1970 and 1966 fiscal years.

Net Sales

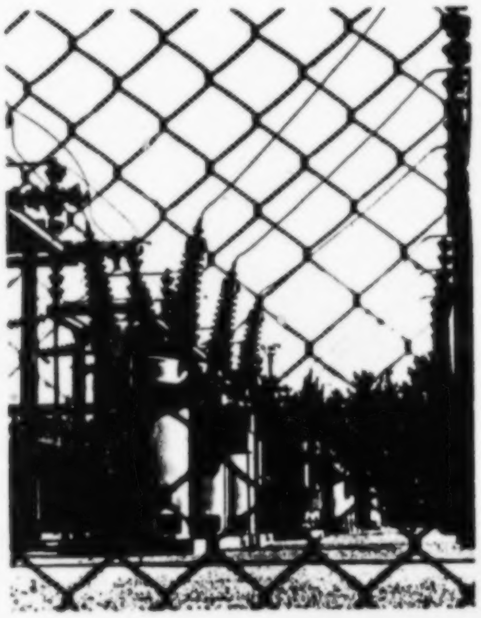


Cash Flow



The Sales Dollar

1.	Raw Materials, Supplies and Operating Expenses	$17,165,938 56%
2.	Payrolls, Employee Insurance and Pension Plans	$8,929,114 29%
3.	Payroll, Property and Income Taxes	$1,971,646 6½%
4.	Depreciation, Amortization and Depletion	$1,564,114 5%
5.	Earnings Retained	$485,009 1½%
6.	Cash Dividends	$534,897 2%
		$30,650,718 100%



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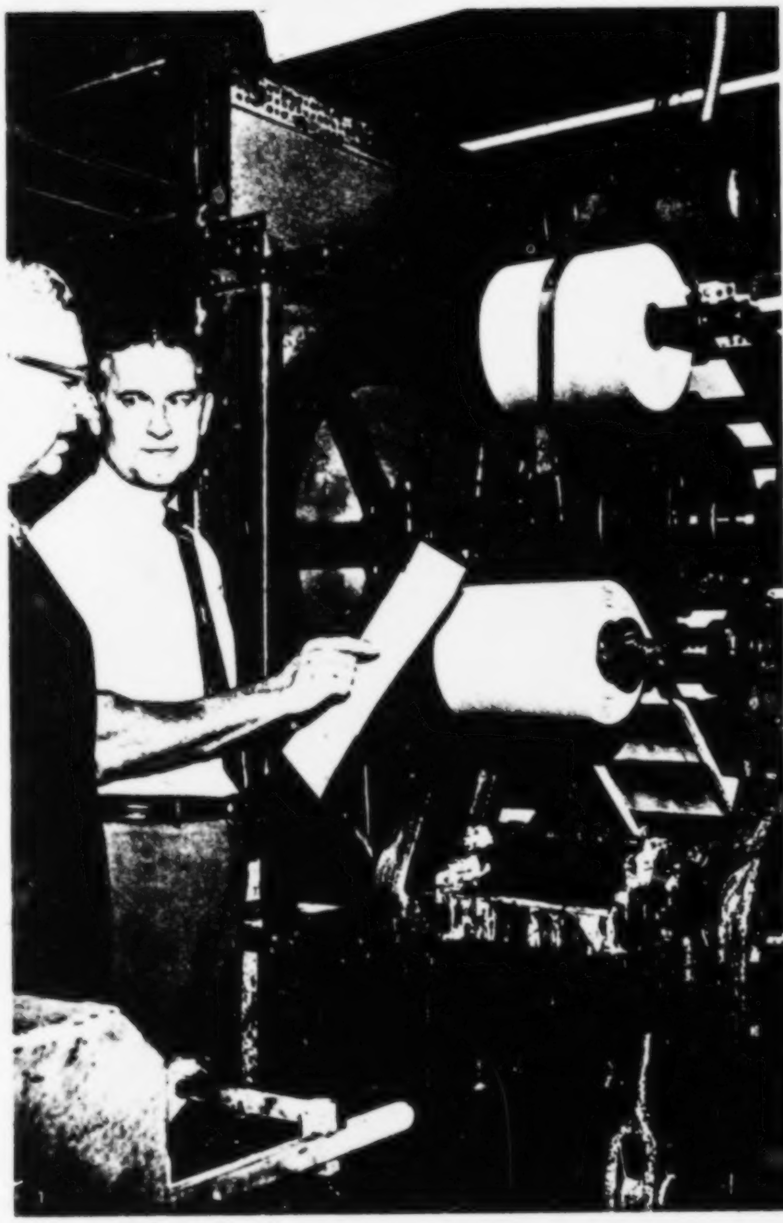
1970
Products

1) Transformer manufacturers rely on the insulating quality of Mosinee's electrical papers.
2) Film-Fyter windshield service products, including solvents and towels, are distributed nationally.
3) "Mod" four-color designs brighten up spiral notebooks. Tablet covers are one of many products printed and coated with water- and scuff-resistant over-lacquer at our Converted Products Division.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1) Industrial papers sales manager, Don Smith, discusses the performance of our die-wipe paper with the general manager of a midwest engraving operation. Smooth kraft paper removes excess ink from engraving plates between impressions.
2-3) Mosinee towels are converted and marketed by the Bay West Paper Company.

MOSINEE PAPER MILLS COMPANY, Mosinee, Wisconsin • BAY WEST PAPER COMPANY, Green Bay, Wisconsin • CONVERTED PRODUCTS DIVISION, Columbus, Wisconsin • INDUSTRIAL FOREST, Solon Springs, Wisconsin • CELLUPONICS SYSTEMS, INC., Gresham, Wisconsin • CALWIS COMPANY, Green Bay, Wisconsin • GREEN BAY PLASTICS, INCORPORATED, Green Bay, Wisconsin

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Exhibit L

MOSINEE PAPER CORPORATION
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REPORT FOR SEVEN MONTHS ENDED DEC. 31, 1970

MOSINEE PAPER CORPORATION
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DIRECTORS/OFFICERS

BOARD OF DIRECTORS

Henry C. Crandall
John E. Forester, Attorney and Managing Trustee
Bidwell K. Gage, President, Bay West Paper Company Division
C. M. Green
Robert V. Jones, President, Marathon Electric Mfg. Corp.
John A. McPherson
F. C. Peacock, President, Calwis Company Division,
Green Bay Plastics Division
Stanley L. Rewey, Executive Vice President,
Marshall & Ilsley Bank
George L. Ruder, Attorney, Ruder & Staples, S. C. (Deceased)
Clarence Scholtens
William J. Servotte
Stanley F. Staples, Jr., Attorney, Ruder & Staples, S.C.
Carl A. von Ende
Ronald A. Westgate, President, Marathon Press Company

CORPORATION OFFICERS

John E. Forester, Chairman of the Board
Clarence Scholtens, President and Chief Executive Officer
F. C. Peacock, Senior Vice President
William J. Servotte, Vice President
Henry C. Crandall, Vice President, Research & Development
Carl A. von Ende, Vice President
Bidwell K. Gage, Vice President
E. C. Batzer, Secretary
R. W. Schmidtke, Treasurer

DIVISION OFFICERS

- Pulp and Paper Division
  - Carl A. von Ende, Vice President, Manufacturing
  - James Kemerling, Vice President, Marketing
  - Douglas Madison, Controller
- Bay West Paper Company Division
  - B. K. Gage, President
  - George DeGroot, Controller
- Calwis Company Division
  - F. C. Peacock, President
  - R. K. Hedge, Vice President & General Mgr.
  - W. R. Ladrow, Controller
- Converted Products Division
  - James N. Stelow, Vice President & General Mgr.
  - Joseph Lawlor, Vice President, Manufacturing
  - John M. Ryan, Controller
- Green Bay Plastics Division
  - F. C. Peacock, President
  - Kevin Hogan, Vice President & General Mgr.

It is with deep regret that we report the death of Director and former Board Chairman George L. Ruder. Mr. Ruder, attorney with the law firm of Ruder and Staples, S.C., Wausau, Wisconsin, served as a director of our organization for more than 45 years. He was elected and served as Chairman of the Board from 1958 through 1968. Mr. Ruder made many fine contributions to the growth and development of the Mosinee organization. We shall miss him.

TO THE SHAREHOLDER

CHANGE FISCAL YEAR

For many years, Mosinee has operated on a June 1 - May 31 fiscal year. In the interest of accounting efficiencies and to better enable us to compare our results to the performance of the rest of the paper industry, this was changed to a calendar fiscal year. Accordingly, this report covers the seven-month adjustment period from June 1, 1970 to December 31, 1970. Our next Annual Report will cover operations for the calendar year, 1971.

SALES AND EARNINGS

The seven-month period covered in this report was very unsatisfactory. When a recession occurs, you can be sure the paper industry will be affected. Because specialty papers are closely related to the industrial sector of the economy, Pulp and Paper Division orders were seriously reduced. In addition, our markets have not been strong enough to permit the extensive price increases needed to effectively counter reduced demand.

Therefore, the recession, a predicted drain on profits due to the continued development of our Converted Products Division, and significant increases in the cost of freight, labor and raw materials have combined to reduce our sales and earnings.

Sales for the seven-month period amounted to $17,323,950. Earnings after income taxes and before extraordinary items were $251,264, equivalent to $.31 per share. After the establishment of a $200,000 reserve for the anticipated write off of discontinued operations and a special credit of $62,577 due to Revenue Agent's changes to prior years' income, the consolidated net earnings were $113,841, equal to $.14 per share based on the 806,177 shares outstanding at the end of the fiscal period.

CORPORATE REORGANIZATION

Our previously announced reorganization on a divisional basis has been completed. The Mosinee Paper Corporation now consists of five operating centers, each with individual profit responsibilities. They are the Bay West Paper Company Division, the Calwis Company Division and the Plastics Division, all in Green Bay, Wisconsin; the Pulp and Paper Division at Mosinee and the Converted Products Division at Columbus, Wisconsin. Corporate offices are located at Mosinee.

Divisionalization should increase operating efficiency and result in improved budgeting, cost analysis and control.

ENVIRONMENTAL REFORM

On December 1, 1970, the Mosinee Pulp and Paper Division received a pollution abatement order from the State of Wisconsin Department of Natural Resources (DNR). The order was one of 64 similar orders presented to industry and municipalities located on the Wisconsin River. The DNR is attempting to improve the water quality of the Wisconsin River.

The abatement order specifically states that our Pulp and Paper Division must drastically reduce its suspended solid and B.O.D. (biological oxygen demand) contribution to the River. We must, according to the State agency, submit a preliminary engineering report for required treatment facilities by August 1, 1971, begin construction of the facility by January 1, 1972, and begin operating the treatment plant by August 1, 1973.

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We recognize the importance of improved water quality and have stated our willingness to comply with the DNR orders which are stringent. The cost of attaining the DNR standards by 1973 will be substantial.

The Manufacturing and Research Departments of the pulp and paper operation have already begun a detailed study in preparation for the necessary modifications required to install a primary treatment facility. To supplement our engineering talent, we have retained highly competent engineering services with extensive experience in pollution abatement and paper process systems.

INDUSTRIAL PAPERS

Mosinee's Pulp and Paper Division is the foundation of our entire corporation. Therefore, the task of bringing its operations back to the level we feel it is capable of is our major concern. We are working very hard to reduce costs and become more competitive in the industrial specialty markets. A stronger emphasis on marketing and an increased product development effort will, we feel, help us to achieve our full potential as a versatile manufacturer of industrial specialty papers. Our ability to solve a customer's problem with Value Engineered paper is well known in our present markets. The penetration of new markets is our ultimate goal.

ECONOMIC CONDITIONS

As this report goes "to press," industrial orders are improving. Our other divisions are also experiencing some improvement in order flow. A reversal of current economic conditions will be slow; however, as the recession diminishes, we will be ready to take full advantage of improved product demand.

John E. Forester

JOHN E. FORESTER
Chairman of the Board

Clarence Scholtens

CLARENCE SCHOLTENS
President

FORESTER

SCHOLTENS

FINANCIAL REPORT

FOR THE SEVEN MONTHS ENDED DECEMBER 31, 1970

The sole purpose of this report is to give present stockholders and employees information about the company. This is not a representation, prospectus or circular in respect to any stock of any corporation, and is not transmitted in connection with any sale or offer to sell or buy any stock or security now or hereafter to be issued, or with any preliminary negotiations for such sale.

CONSOLIDATED STATEMENT OF FINANCIAL CONDITION

ASSETS

	December 31, 1970	May 31, 1970
Current Assets:		
Cash	$ 352,216	$ 434,914
Accounts receivable	2,587,093	2,491,688
Inventories (valued at cost or market, whichever lower, except pulpwood valued under the last-in, first-out method)	5,598,041	5,448,310
Other current assets:		
Estimated income tax refunds		146,300
Other	428,504	368,567
Total current assets	8,965,854	8,889,779
Investments -- At cost	50,833	50,833
Fixed Assets -- At cost:		
Depreciable property: (Note 3)		
Buildings	5,122,158	4,993,002
Machinery and factory equipment	24,484,610	24,369,563
Other equipment	236,333	210,327
Office furniture and machines	376,205	351,617
Totals	30,219,306	29,924,509
Less -- Accumulated depreciation	17,788,086	17,121,025
Net depreciated value	12,431,220	12,803,484
Timber and timberlands	503,574	520,979
Water power rights	128,966	128,966
Land and land improvements	106,055	106,055
Construction in progress	132,902	286,706
Total fixed assets	13,302,717	13,846,190
Deferred Charges	430,631	274,851
Other Assets	1,079,336	959,594
TOTAL ASSETS	**$23,829,371**	**$24,021,247**

The accompanying notes are an integral part of this statement.

LIABILITIES

	December 31, 1970	May 31, 1970
Current Liabilities:		
Principal payments due within one year on 5% First Mortgage Promissory Notes	$ 300,000	$ 300,000
Notes payable -- Banks:		
Secured (current maturities)	19,200	18,300
Unsecured		200,000
Accounts payable	1,532,584	1,601,871
Accrued and other liabilities	844,699	811,273
Accrued income taxes	12,100	
Total current liabilities	2,708,583	2,931,444
Long-term Liabilities: (Note 4)		
5% First Mortgage Promissory Notes, due May 1, 1983	3,450,000	3,600,000
Notes payable -- Banks -- Secured	114,701	129,223
Other	36,667	25,000
Total long-term liabilities	3,601,368	3,754,223
Total liabilities	6,309,951	6,685,667
Reserves: (Note 3)		
Deferred estimated income tax liability	1,394,668	1,354,718
Deferred income -- Investment tax credit	251,582	268,884
Estimated loss on discontinued operations (net after income taxes)	200,000	
Total reserves	1,846,250	1,623,602
Minority Interest		62,192

STOCKHOLDERS' EQUITY

	December 31, 1970	May 31, 1970
Preferred Stock (no designation as to par or stated value):		
Authorized -- 1,000,000 shares		
Issued and outstanding -- None		
Common Stock -- $5 par value per share:		
Authorized -- 2,500,000 shares		
Issued -- 991,109 shares	4,955,533	4,955,533
Capital Surplus (Note 6)	589,106	483,975
Earnings Retained (Note 4)	11,199,243	11,362,579
Total	16,743,882	16,802,087
Less -- Treasury stock (184,932 shares at December 31, 1970 and 199,024 shares at May 31, 1970) (Note 6)	1,070,712	1,152,301
Total stockholders' equity	15,673,170	15,649,786
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	**$23,829,371**	**$24,021,247**

The accompanying notes are an integral part of this statement.

CONSOLIDATED STATEMENT OF EARNINGS

	Seven Months Ended	Year Ended	
	December 31, 1970	December 31, 1970 (Unaudited)	May 31, 1970
Net sales	$17,323,950	$30,125,944	$30,650,718
Cost of sales	14,418,176	24,418,732	24,553,185
Gross profit on sales	2,905,774	5,707,212	6,097,533
Operating expenses:			
Research and development expense	131,505	232,155	254,012
Selling and advertising expense	1,018,939	1,789,779	1,799,842
Administrative expense	1,218,637	2,118,151	1,754,011
Total operating expenses	2,369,081	4,140,085	3,807,865
Profit from operations	536,693	1,567,127	2,289,668
Other income	93,516	91,589	114,448
	630,209	1,658,716	2,404,116
Other deductions	182,895	287,381	231,741
Net earnings before provision for income taxes, minority interest and extraordinary items	447,314	1,371,335	2,172,375
Provision for income taxes (Note 5)	180,364	645,484	1,132,620
Net earnings before minority interest and extraordinary items	266,950	725,851	1,039,755
Minority interest in earnings of subsidiary companies	15,686	25,535	19,849
Net earnings before extraordinary items	251,264	700,316	1,019,906
Extraordinary items:			
Charge -- Estimated provision for loss on discontinued operations (net after income taxes)	(200,000)	(200,000)	
Credit -- Net adjustment to prior years' income due to Revenue Agent's changes	62,577	62,577	
Consolidated net earnings	$ 113,841	$ 562,893	$ 1,019,906
Earnings per share of common stock outstanding: (Note 8)			
Before extraordinary items	$ .31	$ .87	$ 1.27
Extraordinary items (net)	.17	.17	
Consolidated net earnings	$ .14	$ .70	$ 1.27

The accompanying notes are an integral part of this statement.

CONSOLIDATED STATEMENT OF EARNINGS RETAINED

	Seven Months Ended	Year Ended	
	December 31, 1970	December 31, 1970 (Unaudited)	May 31, 1970
Consolidated earnings retained at the beginning of the year or period	$11,362,579	$11,190,703	$12,857,385
Plus -- Net earnings for the year or period	113,841	562,893	1,019,906
	11,476,420	11,753,596	13,877,291
Less:			
Cash dividends paid on common stock ($.35 per share during seven months ended December 31, 1970; $.70 per share during calendar 1970 and $.675 per share during year ended May 31, 1970)	277,177	554,353	534,897
Transfer to common stock to reflect 100% stock dividend effected in form of stock split			1,979,815
	277,177	554,353	2,514,712
Consolidated earnings retained at the end of the year or period	$11,199,243	$11,199,243	$11,362,579

NOTE -- Earnings per share and dividends paid per share have been adjusted to reflect 100% stock dividend effected in form of 2 for 1 stock split during year ended May 31, 1970.

The accompanying notes are an integral part of this statement.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 1 -- PRINCIPLES OF CONSOLIDATION

The accompanying financial statements consolidate the accounts of Mosinee Paper Corporation and its wholly-owned subsidiary, Celluponic Systems, Inc. They also include the accounts of three former subsidiary companies merged into Mosinee Paper Corporation in late December, 1970, in accordance with a plan of reorganization further explained in Note 2 below. Intercompany transactions and accounts have been eliminated. The excess of purchase price over net book value of Calwis Company stock acquired in May, 1968, and December, 1970, in the amount of $395,131, will be amortized over a forty-year period beginning January 1, 1971, in accordance with Accounting Principles Board Opinion No. 17.

NOTE 2 -- REORGANIZATION AND CHANGE IN FISCAL YEAR

On December 31, 1970, a reorganization of the company and three of its subsidiaries was completed. The reorganization included the statutory merger of Bay West Paper Company, Calwis Company and Green Bay Plastics, incorporated into the parent company. It also resulted in the adoption of a calendar year for reporting and a name change to Mosinee Paper Corporation. Celluponic Systems, Inc. was not included in the reorganization and continues to be a wholly-owned subsidiary.

NOTE 3 -- DEPRECIABLE FIXED ASSETS

Depreciation charged against consolidated income totaled $736,069 for the seven months ended December 31, 1970. The companies claim accelerated depreciation for income tax purposes while utilizing the straight-line method for accounting purposes. Both provisions are based on the use of U. S. Treasury Department guideline lives.

NOTE 4 -- LONG-TERM LIABILITIES

The 5% First Mortgage Promissory Notes, due May 1, 1983, are secured by a first mortgage on substantially all of the property of Mosinee Paper Corporation, except timberlands. The loan agreement provides for semi-annual principal payments of $150,000 on May 1 and November 1 of each year. Other indenture provisions, among which are requirements relating to working capital, limitations with respect to dividend payments and acquisition of the company's capital stock, had been complied with at December 31, 1970. As of that same date, approximately $4,842,000 of retained earnings is not restricted as to payment of cash dividends or acquisitions of the company's capital stock.

NOTE 5 -- RESERVES

The reserve for deferred estimated income tax liability results from the use of accelerated depreciation methods for income tax purposes in excess of straight-line provisions for accounting purposes. The provision for income taxes for the seven months ended December 31, 1970, includes deferred Federal income taxes resulting therefrom in the approximate amount of $40,000.

During the year ended May 31, 1967, the companies adopted the full flow-through method of taking the investment credit into income and elected to amortize the accumulated prior years' credits in accordance with the method previously in effect. The total credit reflected as a reduction in the provision for Federal income taxes for the seven months ended December 31, 1970, in accordance with these practices, totaled $17,302.

Mosinee Paper Corporation has provided a reserve for estimated loss on discontinued operations in the amount of $200,000, net after income taxes. This reserve has been provided to cover the estimated net loss expected to be incurred in the discontinuance of certain operations which, as of the date of this report, have been substantially terminated.

NOTE 6 -- CAPITAL SURPLUS AND TREASURY STOCK

In connection with the aforementioned reorganization and the statutory merger of three subsidiary companies into the parent company, the minority interest held in Calwis Company was acquired in exchange for 14,092 shares of Mosinee Paper Corporation common stock. The excess of market value of such shares over the cost of treasury stock issued in the exchange has been credited to the capital surplus account.

NOTE 7 -- PENSION PLANS

Substantially all employees of Mosinee Paper Corporation are covered under retirement programs. Cost of such programs aggregated $251,510 for the seven months ended December 31, 1970, of which $52,137 was for past service. The unfunded liability under the plans amounted to approximately $2,125,000 at December 31, 1970.

NOTE 8 -- STOCK OPTION PLAN

Mosinee Paper Corporation has reserved common stock, not to exceed an aggregate of 30,000 shares, under a Qualified Stock Option Plan, which provides for the granting of options at 100% of fair market value at date of grant. At December 31, 1970, options had been granted for 25,984 shares in accordance with terms of the plan; at that same date, options for 2,190 shares had been exercised and 2,262 options had terminated.

Earnings per share computations have been made in accordance with Accounting Principles Board Opinion No. 15 as it relates to employee stock options.

NOTE 9 -- COMMITMENTS AND CONTINGENCIES

As of December 31, 1970, Mosinee Paper Corporation had unexpended balances totaling approximately $70,000 under approved authorizations for plant extension and improvement projects.

Mosinee Paper Corporation and its wholly-owned subsidiary, Celluponic Systems, Inc., are defendants in a lawsuit by a former employee of the subsidiary in connection with a contract of employment, in which the plaintiff claims a substantial amount of damages. At the present time, many of the details of the charges have not been fully investigated by legal counsel. However, in the opinion of such counsel, the lawsuit has no basis in fact and the ultimate liability, if any, would not have a materially adverse effect on the operations or financial position of the companies.

Mosinee Paper Corporation, along with several other paper mills on the Wisconsin River, has been issued anti-pollution orders by the Department of Natural Resources of the State of Wisconsin. The company has until August 1, 1973 to comply with such orders, and has retained the services of outside engineers to assist in the determination of procedures necessary to insure full compliance therewith.

CONSOLIDATED STATEMENT OF SOURCE AND APPLICATION OF FUNDS -

SEVEN MONTHS ENDED DECEMBER 31, 1970

Source of funds:	
Consolidated net earnings	$ 113,841
Depreciation, amortization and depletion	910,622
Estimated provision for loss on discontinued operations (net after income taxes)	200,000
Deferred estimated income taxes (net)	39,951
Other changes (net)	(66,430)
	1,197,984
Application of funds:	
Additions to plant and equipment, net of book value of dispositions	233,279
Additions to turn-towl cabinet leases and other intangibles	224,070
Reduction in long-term liabilities	164,522
Cash dividends paid	277,177
	899,048
Increase in net working capital	$ 298,936

The accompanying notes are an integral part of this statement.

ACCOUNTANTS' CERTIFICATE

To The Board of Directors
Mosinee Paper Corporation

We have examined the Consolidated Statement of Financial Condition of Mosinee Paper Corporation and Subsidiary as of December 31, 1970, and the Consolidated Statements of Earnings and Earnings Retained and Source and Application of Funds for the seven months then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances. We previously made a similar examination for the year ended May 31, 1970.

In our opinion, the financial statements referred to above present fairly the financial position of the companies at December 31, 1970, and the results of their operations and source and application of funds for the seven months then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding period.

WIPFLI, ULLRICH & COMPANY
Certified Public Accountants

February 18, 1971
Wausau, Wisconsin

FIVE YEAR SUMMARY

	Year Ended Dec. 31, 1970*	Year Ended May 31,			
		1970	1969	1968	1967
Operations: (In thousands)					
Net sales	**$30,126**	$30,651	$29,453	$27,069	$23,709
Earnings before depreciation amortization, depletion and income taxes	**2,905**	3,718	4,256	3,788	3,199
Depreciation, amortization and depletion	**1,559**	1,566	1,608	1,508	1,337
Net earnings before income taxes and extraordinary items	**1,346**	2,152	2,648	2,280	1,862
Income taxes	**646**	1,132	1,358	1,083	694
Net earnings before extraordinary items	**700**	1,020	1,290	1,197	1,168
Extraordinary items (net charge)	**137**				
Consolidated net earnings	**563**	1,020	1,290	1,197	1,168
Financial Condition: (In thousands)					
Working capital	**$ 6,257**	$ 5,958	$ 5,090	$ 4,327	$ 4,121
Plant, property and equipment (net)	**13,303**	13,846	14,471	14,657	14,447
Expenditures for plant and equipment	**608**	714	1,229	1,400	3,391
Long-term liabilities	**3,601**	3,754	4,058	4,365	4,681
Employees:					
Average number of employees	**886**	900	898	854	803
Investment for each employee	**$26,895**	$26,690	$26,898	$26,979	$27,690
Wages and salaries (In thousands)	**8,033**	8,187	7,611	6,962	6,066
Stockholders:					
Number of stockholders	**1,724**	1,697	1,691	1,551	1,509
Net earnings per share**					
Before extraordinary items	**$ .87**	$ 1.27	$ 1.60	$ 1.48	$ 1.45
Extraordinary items (net)	**.17**				
After extraordinary items	**.70**	1.27	1.60	1.48	1.45
Dividends paid per share**	**.70**	.675	.525	.50	.475
Book value per share**	**19.44**	19.76	19.16	18.06	16.75

* Items relating to consolidated net earnings for the year ended December 31, 1970, are based on unaudited figures.

** Adjusted for 2 for 1 stock split in November, 1969.

MOSINEE PAPER CORPORATION

Corporate Offices, Mosinee, Wisconsin • Pulp and Paper Division, Mosinee, Wisconsin • Converted Products Division, Columbus, Wisconsin • Bay West Paper Company Division, Green Bay, Wisconsin • Calwis Company Division, Green Bay, Wisconsin • Green Bay Plastics Division, Green Bay, Wisconsin • Industrial Forest, Solon Springs, Wisconsin

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Exhibit M

MOSINEE
PAPER CORPORATION

INTERIM REPORT

JANUARY 1, 1971 TO
MARCH 31, 1971

TO OUR SHAREHOLDERS: April 1971

The first quarter of 1971 was a period of partial recovery from the reduced business level Mosinee experienced during the last half of 1970. Complete recovery will depend on improvements in the national economy.

Net earnings for the quarter ended March 31, 1971, were $166,000, equivalent to $.21 per share, a 30% reduction in earnings compared to the similar period in 1970. It is significant to note that our earnings position parallels the paper industry's performance.

Due to recessional pressures and the need to conserve cash for the substantial investments required to meet pollution abatement standards set by the Wisconsin Department of Natural Resources, the company's regular quarterly dividend has been reduced to $.10 per share from the $.17½ paid in the prior quarter.

We approach the balance of the 1971 fiscal year with the hope that paper industry earnings will respond to an improved economy and that Mosinee will share in this improvement.

FIRST QUARTER ENDED MARCH 31, 1971 AND 1970

	First Quarter		Increase (Decrease)	
	1971	1970	Amount	Percent
Sales	$7,861,000	$8,006,000	($145,000)	(2)
Net Earnings	166,000	242,000	(76,000)	(31)
Earnings Per Share	.21*	.30*	(.09)	(30)
Dividends Paid Per Share	.17½	.17½		

*Based on shares outstanding at the end of the current quarter.

NOTE: Figures presented are subject to year-end audit.

C. Scholtens
Clarence Scholtens
President

John E. Forester
John E. Forester
Chairman of the Board

BEST COPY AVAILABLE

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

[Caption Omitted]

Affidavit

L. C. Hammond, Jr., having been duly sworn on oath deposes and says:

1. I am one of the counsel for plaintiff in the above entitled action. I make this affidavit in opposition to certain assertions contained in the affidavit of defendants' counsel and defendants' brief in support of their motion for summary judgment, as well as to bring before the Court for consideration on this motion a certain document not yet of record.

2. At the pretrial conference in this matter at Eau Claire, Wisconsin on December 8, 1971, counsel agreed to attempt to stipulate to those facts which counsel could agree were not in contest. Defendants' counsel thereafter volunteered to prepare the initial draft of the proposed stipulation, which I concluded was most appropriate due to the fact that the stipulation related to a motion initiated by defendants, and, hence, defendants' counsel should be most aware of those material, uncontested facts which he felt were relevant to the consideration of his motion.

3. Defendants' counsel delivered to my office a proposed stipulation shortly before 5:00 P.M. on Monday, December 20, 1971, and indicated during a telephone call just prior to its delivery that he needed agreement thereon by December 22, 1971, in order to meet the scheduled filing time for defendants' brief of December 24, 1971.

4. After reviewing the proposal on the evening of December 20, 1971, and the morning of the following day, I concluded that there were many assertions contained therein which required verification from persons located in Wau-

sau and Mosinee, and promptly had a copy reproduced and forwarded requesting such verification. I also concluded that the proposed agreement was not prepared in the manner of simple assertion of facts in an unbiased manner, but contained numerous innuendoes and nuances favoring defendant, as well as many irrelevant, immaterial, and factually unsupported assertions.

5. Because of schedule conflicts, Mr. Beckwith and I had difficulty in meeting until Wednesday, December 22, 1971, at which time I had not yet been advised by Mosinee personnel as to the accuracy of certain matters contained in the proposed stipulation. At the meeting of December 22, it appeared to me to be impossible to resolve all of the factual disputes and language objections contained in the draft before the deadline expiration. Accordingly, I suggested that defendants put forth the facts they deemed material and uncontested by way of affidavit, and that plaintiff would respond in similar manner, if necessary.

6. Defendant has chosen to support its motion by affidavit of its counsel, Mr. Beckwith, as opposed to affidavit by any of the parties who apparently have firsthand knowledge of events involved in this action. Plaintiff does not object to this practice except to the extent that assertions in that affidavit relate to what plaintiff believes are factual inaccuracies or are not consistently supported by the various witnesses' deposition testimony, as specifically pointed out in plaintiff's brief.

7. In light of the provision of Rule 56(c) of the Federal Rules of Civil Procedure that the Court may consider depositions of record in resolving summary judgment motions, plaintiff will not tender affidavits in opposition to the motion for summary judgment except to give the above explanation regarding the non-existence of a stipulation and to bring before the Court the attached Exhibit, a memorandum dated September 2, 1971 by Jon C. Bruss, Assistant Vice-President and Commercial Loan Officer, Marine National Exchange Bank, Milwaukee, of conversations with

Mr. Rondeau September 1 and 2, 1971 referred to in plaintiff's brief.

8. The depositions of record on which plaintiff relies in opposing defendants' summary judgment motion are:

a. John J. Altenburg, at plaintiff's instance October 6, 1971

b. Earl A. Bachman, at plaintiff's instance October 6, 1971

c. Jon C. Bruss, at plaintiff's instance September 17, 1971

d. Margaret A. Dessert, at plaintiff's instance October 6, 1971

e. John E. Forester, at defendants' instance September 21, 1971 (continued September 30, 1971)

f. Ray M. Heckman, at plaintiff's instance September 24, 1971

g. Jerome A. Jeub, at plaintiff's instance September 24, 1971

h. San W. Orr, Jr., at defendants' instance September 30, 1971

i. Francis A. Rondeau, at plaintiff's instance September 8, 9 and December 21, 1971

j. Clarence Scholtens, at defendants' instance September 21 and September 30, 1971

k. Wilbur J. Winetzki, at plaintiff's instance September 24, 1971

Page references to those portions of the foregoing transcripts which plaintiff deems material are made in its brief filed herewith.

/s/ L. C. Hammond, Jr.
L. C. HAMMOND, JR.

Subscribed and sworn to before me this 12th day of January, 1972.

/s/ Doreen A. Klauck
Notary Public, State of Wisconsin
My Commission expires Sept. 29, 1974

Francis A. Rondeau
Mosinee, Wisconsin

JCB to pas September 2, 1971

On September 1, Francis Rondeau walked in the Bank to visit regarding our bank's policy on loans secured by over-the-counter stock of Mosinee Paper Company. The visit on September 1 included WJM and JCB. Rondeau was also introduced to WJR, CES and WVOF, the latter with whom he was already acquainted from a previous transaction.

Rondeau was atttempting to obtain control of Mosinee Paper Company. He presently owns 67,577 shares of the stock and with such an ownership, which amounts to close to 8%, he is required to file a registration statement with the FCC because his intent is to obtain control of Mosinee Paper Co. Our visit on September 1 was of a general nature with little specific business regarding Mosinee being discussed. On September 2, Francis called me and asked me to join him in his suite at the Pfister for coffee to discuss the proposal further. I asked ORD to join me thereby recognizing that Mosinee is in the Western territory which is the responsibility of Division B. CES was not able to join us because of a previous commitment with Ben Marcus. At that meeting on September 2, Rondeau informed us that he will require net $568,000 which he intends to secure with at least his present holdings of Mosinee Paper and would agree to pledging additional securities if needed. At this time he owes no bank. He owns approximately $200,000 in market value of the Central Wisconsin Bank Shares Corporation common stock (which is approaching 5%). He also owns $450,000 of First Wisconsin Bank Shares Corporation stock which he received from his share of First National Bank of Wausau stock to First Wisconsin Bank Shares. He has a verbal commitment in addition from the Wisconsin Real Estate Investment Trust to purchase $1,200,000 in appraised value of real estate which he owns in Mosinee and $102,000 in Wisconsin Real Estate Investment Trust capital stock.

He intends to obtain control partly through his purchase of additional stock and either through locking in proxies through the formation of certain voting trusts which would include some 20,000 odd shares owned by Maggie Dessert, formerly of this bank, or through friends in the Wausau/Mosinee area including the Schutte's of Wausau Homes. His purpose in attempting to gain control of Mosinee Paper is to break what he describes as a strangle hold which John Forester has on the company and the Wisconsin River Valley. Forester is Manufacturing Trustee of the Woodson Trust. He also has effective control of Wausau Paper Company, Marathon Electric, Masonite Corporation, and Louis Container Corporation of Adams, Wisconsin among other substantial land and improved real estate holdings throughout Wisconsin, Colorado and Florida. Rondeau impressed us as having some competence in the paper field. This was demonstrated by his rather intricate knowledge of the financial facts of life of Mosinee Paper. Mosinee's dividend was recently cut from 17½¢ to 10¢ a share which he believes was unreasonable and in part the result of carrying an inventory of close to $2,000,000 the amount required in an operation in the craft and specialty paper business. Extensive land holdings with pulp are owned by the company amounting almost to 80,000 acres. This land has recently been sold at auction price approximating $55 an acre. The pulp value of the acreage approximates $400 per acre and gives that land a value anywhere from $9,000,000 to $32,000,000. It is very conservatively reflected on the balance sheet. The sale of this property for recreation or pulp purposes would be especially astute according to Rondeau. Clarence "Chum" Scholtens, President of the company, is an accountant, according to Francis and is not the dynamic type of person required for leadership in that company and is not at all sales oriented. The resulting trend in sales over the recent years points to Scholtens shortcomings.

In return for our assistance, Francis promised us compensation from his companies in the way of balances if the effort to obtain control was not successful. His companies include Wausau Cold Storage, Mosinee Cold Storage, Francis A. Rondeau, Inc. (processor and backer of Kraftco Cracker Barrel Cheese) and Francis A. Rondeau Company (a partnership with 17 partners being members of his immediate family). If the effort is successful, he promised a prime though not primary relationship with Mosinee Paper. The M & I Bank presently is the company's lead bank. Whether or not the offer is successful, Francis offered to begin obtaining stock in Central Wisconsin Bank Shares Corporation which Corporation owns First American National Bank of Wausau, Mosinee Commercial Bank and Wisconsin Valley Trust Company and the Central National Bank of Wausau. First American is the principal star in the Central Wisconsin's galaxy and is the largest bank in Central Wisconsin. Francis told us that the M & I has begun making overtures for the acquisition of this holding company and that it would be possible for him to prevent acquisition by controlling 21% of this corporation. He believes that between him and his friends he can come up with close to 15% now so that the additional shares would be no real problem. The acquisition of Central Wisconsin Bank Shares would be substantially enhanced as a result of his ability to control Mosinee Paper.

The writer has known Francis Rondeau for approximately six years. He, to the best of my knowledge, is an extremely honest and able individual who demonstrated a great deal of leadership on the Board of the First National Bank of Wausau and was instrumental in the growth of that bank from its inception in 1961 to its present size of $20,000,000 in footings. At the First Wisconsin he always handled his obligations in an extremely satisfactory manner and was never known to take risks of any substance. In 1970, the writer sold to Rondeau $1,000,000 of Wisconsin Fund, which shares were sold on August 15 of this year. The writer understands that Rondeau was enough of a gentleman and a businessman to notify the Fund 60 days in advance of his impending liquidation of Wisconsin Fund Shares. This was of great benefit to the Fund for Rondeau was its largest shareholder in a fund of $32,000,000 in net assets.

After visiting with Rondeau in his hotel room, we had lunch with Morrie Aylward of Wisconsin Real Estate Investment Trust. Aylward in no uncertain terms made it known to ORD and JCB that they had thoroughly checked on Rondeau and found him to be everything that he represented himself to be. At this juncture preliminary discussions have taken place with JCG and Chuck Poehlmann of the Trust Department. A further meeting will take place after Labor Day so that a position can be determined for our bank. At this time there appears to be little credit risk and our only possible consideration might be a potential public relations problem which ORD and JCB at this juncture believe to be a worthwhile risk.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

[Caption Omitted]

Affidavit of Francis A. Rondeau
(January 24, 1972)

STATE OF WISCONSIN)
MILWAUKEE COUNTY) : SS

FRANCIS A. RONDEAU, being first duly sworn, on oath deposes and says:

1. Affiant is one of the defendants in the above-entitled action and makes this affidavit for and on his own behalf, and on behalf of Mosinee Cold Storage, Inc., Francis Rondeau, Inc., Wausau Cold Storage Corporation, Inc., Francis A. Rondeau Foundation, Rondeau Company and George Rondeau, and in support of defendants' motion for summary judgment pursuant to Rule 56, being duly authorized to do so.

2. Affiant has read the affidavit of David E. Beckwith dated December 24, 1971, and knows the contents thereof and the same is true to his own knowledge. Affiant hereby corroborates and adopts by reference as though fully incorporated herein each of the statements of fact and conclusions and opinions made in said affidavit to the same extent as if made by affiant, and submits the same to the Court in support of defendants' motion for summary judgment.

3. My discussions with Jon C. Bruss in early September were simply preliminary inquiries to determine whether it might be possible for the Marine National Exchange Bank to provide some or all of the financing that I would require for a tender offer should I decide to tender for Mosinee stock. I made it quite clear to Mr. Bruss that my plans respecting a tender offer or proxy contest were not final; rather I was exploring all possible alternatives.

4. In 1971 the annual meeting of Mosinee Paper Corporation was held on April 28. The by-laws of Mosinee Paper Corporation were amended by stockholder action effective in January of 1971 and provide that the annual meeting of the corporation is to be held in April, May or June and in the absence of a specified date, on the fourth Wednesday in April. Those by-laws have not been amended by stockholder action.

5. After having been repeatedly refused access to Mosinee Paper Corporation's stockholder list, I authorized my attorneys to start appropriate legal proceedings in Marathon County to obtain the list. Mosinee contested the case but lost and the Court on January 3 ordered that the list be produced by Mosinee for my inspection and copying within 10 days. I received a copy of the list on January 13. On the next day, January 14, Mosinee's Chairman and President, Messrs. Forester and Scholtens, by letter to stockholders, announced that the 1972 annual meeting would be held on March 1 with the record date being January 24. I am advised by my attorneys that these are the earliest dates that could have been selected after I received the stockholder list. I am also advised that in order to schedule the annual meeting on March 1, it would have been necessary for the directors of Mosinee to amend the corporation's by-laws. I have no personal knowledge of such an amendment. A copy of the portions of the latest Mosinee by-laws of which I am aware relating to annual meetings is attached hereto as Exhibit A.

6. On January 17, with my consent, my attorneys formally complained to the Wisconsin Commissioner of Securities, Mr. Thomas Nelson, that the action of the Mosinee directors in advancing the date of the 1972 annual meeting was inequitable and a patently obvious attempt to make any proxy contest or tender offer virtually impossible. This telephone complaint was followed by a letter of confirmation, a copy of which is attached hereto as Exhibit B.

7. I have found in discussing the possibility of a tender offer with various financial institutions that it is virtually impossible to proceed with the tender offer so long as this action pends because of the possibility (however remote) that the Court in this action might require divestiture of Mosinee shares or sterilize all of the shares which I have acquired or may acquire hereafter. Further, my counsel, as well as firms who are engaged in proxy solicitation, have advised me that it would be exceedingly difficult to conduct a proxy contest during the pendency of this action. Accordingly the continuation of this action coupled with the change in the annual meeting date of Mosinee effectively thwarts any plans to proceed with a tender for Mosinee stock or to solicit proxies for directors other than those nominated by management. If this action is dismissed it now appears I will have to start another state court action to enjoin Mosinee from holding its meeting on March 1.

8. This Affidavit is made in support of defendants' Motion for Summary Judgment. I am authorized by all of the defendants other than the two Banks to file this Affidavit on their behalf.

/s/ Francis A. Rondeau
Francis A. Rondeau

Subscribed and sworn to before me this 24 day of January, 1972.

/s/ James O. Huber
Notary Public, Milwaukee County, Wisconsin

My commission is permanent.

Exhibit A

REVISED BY-LAWS
OF
MOSINEE PAPER CORPORATION

January 1, 1971

ARTICLE I. OFFICES

The principal office of the Corporation in the State of Wisconsin shall be located in the City of Mosinee, County of Marathon. The Corporation may have such other offices, either within or without the State of Wisconsin, as the Board of Directors may designate or as the business of the Corporation may require from time to time.

The registered office of the Corporation required by the Wisconsin Business Corporation Law to be maintained in the State of Wisconsin may be, but need not be, identical with the principal office in the State of Wisconsin, and the address of the registered office may be changed from time to time by the Board of Directors.

ARTICLE II. SHAREHOLDERS

Section 1. *Annual Meeting.* The annual meeting of the shareholders shall be held in the month of April, May or June each year at such time and place as may be designed [sic, designated] by the Board of Directors for the purpose of electing Directors and for the transaction of such other business as may come before the meeting:

However, that if not so designated, the annual meeting shall be held on the fourth Wednesday in April in each year at 2:00 P.M. at the office of the Corporation except when such day is a legal holiday in Wisconsin, in which case the meeting shall be held on the next succeeding business day.

Exhibit B

FOLEY & LARDNER
735 NORTH WATER STREET
MILWAUKEE, WISCONSIN 53202

VIA MESSENGER January 19, 1972

Mr. Thomas Nelson
Securities Commissioner, Wisconsin Department of Securities
P.O. Box 1768, 448 West Washington Avenue
Madison, Wisconsin 53703

Re: Complaint of Francis A. Rondeau, a Stockholder, Against the Officers and Directors of Mosinee Paper Corporation.

Dear Mr. Nelson:

As you know, we represent Mr. Francis A. Rondeau, a resident of Mosinee, Wisconsin, and one of the principal stockholders of Mosinee Paper Corporation. Mr. Rondeau, together with companies and firms with whom he is associated, own approximately 8% of the common stock of Mosinee Paper Corporation.

In August, 1971, Mr. Rondeau filed with the Securities and Exchange Commission, and sent to Mosinee Paper Corporation, a Schedule 13D stating that he was actively considering a tender offer for the common stock of Mosinee Paper Corporation or a campaign to solicit proxies from Mosinee stockholders for a slate of directors other than those nominated by Mosinee management. The possibility of a tender offer and/or a proxy contest received widespread newspaper publicity, and now is involved in litigation brought by Mosinee against Mr. Rondeau in the United States District Court for the Western District of Wisconsin. (Case No. 71-C-335)

In order for Mr. Rondeau to determine whether a tender offer or solicitation of proxies was practical or feasible, he requested, on several occasions between October 5, 1971, and December 3, 1971, access to the Company's stockholder list pursuant to Section 180.43(2) of the Wisconsin Statutes. All of these requests were either refused or ignored by Mosinee. Accordingly, on December 7, 1971, Mr. Rondeau commenced a mandamus action in the Circuit Court for Marathon County to obtain the list, and on January 3, 1972, the Honorable Ronald D. Keberle, Circuit Judge, ordered Mosinee to produce the list within ten days for the purposes stated in the petition, to wit: considering communicating and communicating with other shareholders of Mosinee in order to solicit proxies to effectuate management changes, and/or present a written offer to the shareholders of the Company to purchase their shares of stock. The list was delivered to the undersigned by counsel for Mosinee on January 13, 1972.

Immediately thereafter, on January 14, 1972, Mosinee Paper Corporation announced in a press release (a copy of which is enclosed), that its annual stockholders meeting for 1972 would be held on March 1, and that the record date for the meeting was January 24, 1972. Significantly, each of these dates are the earliest dates that the directors could have selected under Wisconsin Statutes Section 180.26. It is even more significant, however, that the most recent bylaws of Mosinee with which we are familiar require that the annual meeting of the Company be held in the months of April, May or June. A copy of the pertinent sections of those bylaws also is enclosed. Last year, for example, the Company held its annual meeting on April 28. The fourth Wednesday in April is called for by Article II, Section 1, of the most recent bylaws of Mosinee Paper Corporation, with which we are familiar, for its annual meeting of shareholders.

It would seem apparent that the directors of Mosinee Paper Corporation have very recently amended the corporation's bylaws to advance the annual meeting and record dates in order to impede and frustrate any effort by Mr. Rondeau to communicate with the shareholders. We believe this manipulation of the corporate machinery is designed solely to perpetuate present management and not for any purpose beneficial to Mosinee Paper Corporation and its stockholders.

As you are aware, the Supreme Court of Delaware in *Schnell* v. *Chris-Craft Industries, Inc.*, —— A. 2d ——, November 29, 1971, Case No. 178, 1971, recently decided that comparable action on the part of officers and directors of Chris-Craft, Inc. was inequitable and should be enjoined. In that case, the directors of Chris-Craft, by an amendment to the company's bylaws, advanced the company's annual meeting of shareholders to December 8, 1971, instead of on the date fixed in the bylaw in effect before its amendment, namely the second Tuesday in January, 1972. The dissident shareholders of Chris-Craft alleged that they would be severely handicapped in their efforts to adequately place their case before their fellow stockholders for decision, and wage a proxy fight, because of the exigencies of time. Even though the directors had technically complied with Delaware law, the Supreme Court of Delaware enjoined the directors from holding the annual meeting on December 8, 1971 and held that equity required that it be held at a later date.

On behalf of Mr. Rondeau, we respectfully request that you investigate this matter and take whatever formal or informal action you deem appropriate. We would hope that at the very least, you would be in a position to advise the public and the stockholders of Mosinee Paper Corporation that in your view, the action taken by the officers and directors of the Company was inequitable and improper. Because there may be some doubt whether Wisconsin Statutes would permit you to require the action of Mosinee officers and directors to be rescinded or to enjoin the holding of the meeting, we presently are considering commencement of such an action and reinstatement of the annual meeting date in accordance with the enclosed bylaws. We will keep you advised of the progress of any such action.

Please let us know whether you plan to investigate this matter and whether there is any further information that you require from us.

Very truly yours,
/s/ James O. Huber
James O. Huber

Enclosures

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

[Caption omitted]

Opinion and Order

71-C-335

This is a civil action brought under the Securities Act of 1934, as amended. Plaintiff alleges that defendants have violated §§13(d) and 14(c) of the Williams Act, 15 U.S.C. §§78m(d) and 78n(e), and §10(b) and Rule 10b-5 of the Securities and Exchange Act, 15 U.S.C. §78j(b), 17 C.F.R. §240.10b-5. Plaintiff has requested an injunction restraining defendants from voting any common stock of plaintiff held or acquired in violation of the Securities Exchange Act, from using such stock as collateral to secure funds for the purpose of acquiring control of plaintiff, and from acquiring additional common stock of plaintiff until the effects of defendants' violations have been fully dissipated. Plaintiff has also demanded that defendants be required to divest themselves of all or some of defendants' shares of plaintiff's common stock, acquired in violation of the Act. Plaintiff finally requests damages for injuries sustained as the result of defendants' illegal activities. Jurisdiction is present under 15 U.S.C. §78aa. Defendants First Wisconsin National Bank of Wausau and First Wisconsin National Bank of Milwaukee have filed a motion to dismiss. Plaintiff moved for a preliminary injunction but subsequently said motion was voluntarily withdrawn. A motion for summary judgment in favor of all of the defendants is presently before this court.

I find and conclude that there is no genuine issue of material fact as to the propositions contained in the section of this opinion entitled "Facts."

FACTS

Plaintiff, Mosinee, is a Wisconsin corporation having its principal place of business at Mosinee, Wisconsin, where it is engaged in the business of manufacturing, converting and selling specialty papers, paper products and plastics. Its only class of equity security outstanding and registered pursuant to Section 12 of the Securities Exchange Act, 15 U.S.C. §781, is common stock, of which there were 806,177 shares outstanding as of August 31, 1971.

Plaintiff, in recent history and until 1970, had increasing sales and profits. It had a decline in earnings in 1970 and in the first quarter of 1971. In the spring of 1971, the directors of Mosinee reduced its dividend.

The president of the plaintiff is Clarence Scholtens; the Chairman of the Board of Directors is John E. Forester. Collectively, Mr. Forester, who has a law degree but who does not practice law as his occupation, his wife, and trusts established by Mr. and Mrs. Cyrus Yawkey and Mr. Aytchomonde P. Woodson (son-in-law of the Yawkeys) are the largest stockholder of the plaintiff corporation. Mr. Forester is a director of many corporations.

Defendant Francis A. Rondeau, a resident of Mosinee, Wisconsin, is president and general manager of defendant Mosinee Cold Storage, Inc.; president of defendant Wausau Cold Storage Company, Inc.; vice president and a director of defendant Francis Rondeau, Inc.; president and a director of defendant Rondeau Foundation; and a limited partner of defendant Rondeau and Company. Rondeau's formal education ended upon graduation from high school. His present activities include the cold storage business and a variety of investments.

Defendants Mosinee Cold Storage, Francis Rondeau, Inc., and Wausau Cold Storage Company, are Wisconsin corporations having their principal places of business in Wisconsin. Defendant Rondeau Foundation is a Wisconsin nonstock nonprofit charitable corporation with its principal office in Wisconsin. Defendant Rondeau & Company is a Wisconsin limited partnership with its principal place of business in Wisconsin. It is composed of one general partner defendant George Rondeau and nine limited partners, including defendant Francis Rondeau.

Defendant George Rondeau, a resident of Wisconsin and son of defendant Francis Rondeau, is manager, treasurer, and director of defendant Wausau Cold Storage Company, and is general partner of defendant Rondeau & Company.

Defendants First Wisconsin National Bank of Wausau and First Wisconsin National Bank of Milwaukee are Wisconsin corporations with their principal places of business in Wisconsin.

In the winter of 1971, Mr. Francis Rondeau (hereinafter "Mr. Rondeau"), who was considering investing in plaintiff corporation, openly expressed the opinion on a number of occasions that the plaintiff's stock was a good investment. He made his first purchase in his own name, on April 5, 1971, of 500 shares at $12.50 per share. This initial purchase was registered on the books of the plaintiff's stock transfer agent on April 28, 1971. By May 17, 1971, Mr. Rondeau had acquired a total of 40,413 shares of plaintiff's common stock. It was not until July 9, 1971, however, that plaintiff's stock register indicated that Mr. Rondeau and the other defendants herein were record owners of more than 40,309 shares. (I find that given the 806,177 shares of stock outstanding, it requires approximately 40,309 shares to constitute 5% of the issued and outstanding stock of the plaintiff.) From April 5, 1971, through August 4, 1971, the defendants acquired a total of 66,577 shares of stock.

In April, 1971, both Mr. Sholtens and Mr. Forester learned that Mr. Rondeau had made several purchases of plaintiffs stock. By June 1, 1971, the plaintiff was aware that Mr. Rondeau was president of both the Mosinee and

Wausau Cold Storage companies. When Mr. Rondeau's holdings reached 18,000 shares on the plaintiff's records, Mr. Scholtens contacted Mr. Rondeau by telephone, welcoming him as a new substantial shareholder and inquiring into his purpose in purchasing shares. Mr. Rondeau stated that he felt the stock was underpriced and was a good investment; that he intended to continue to purchase shares and might acquire up to 40,000 shares (under 5% of the outstanding stock); and that he was "perfectly happy with the operation."

Mr. Orr, an employee of Forwood, Inc., a corporation presided over by Mr. Forester, and which provides management, accounting, and investment services to the majority shareholders of plaintiff, kept a cumulative total of acquisitions by Mr. Rondeau during 1971; he reported this total to Mr. Forester upon request.* (*=IN CAMERA)

I find that Mr. Rondeau did not know that he was required to file a Schedule 13D under the Williams Act when his holdings exceeded 5% until he consulted his attorney on or about July 30, 1971, immediately after receiving a letter from Mr. Forester stating that Rondeau's activity in plaintiff's stock may have created problems under the Federal Securities Laws. (In July, Mr. Rondeau's holdings of plaintiff's stock had exceeded 60,000 shares.) Mr. Rondeau had his accountants work continuously thereafter to provide the information needed for the 13D Schedule. Mr. Rondeau placed no further orders for plaintiff's stock after July 30, 1971, although some previously placed orders were filled in August, 1971. He filed his first 13D Schedule on August 25, 1971; on September 2, 1971, this action was commenced; on September 29, 1971, an amendment and supplement to defendants' first 13D Schedule was filed.

Mr. Rondeau had been advised in the past that he didn't need to file anything with the SEC until his holdings of any one company exceeded 10%, which had been the law until December of 1970, when the Securities and Exchange

Act was amended to reduce the requirement in Section 13(d)(1) from 10% to 5%. 15 U.S.C. §78m(d)(1). Mr. Forester was also unfamiliar with the requirements of the Williams Act until a few days before he wrote the letter to Mr. Rondeau, which is dated July 30, 1971.

I find that during July, it was common knowledge, "street talk" among brokers, bankers, and business men in the community, that Mr. Rondeau was purchasing plaintiff's stock in substantial quantities. Rumors that Mr. Rondeau was purchasing stock began as early as June, but were vague with respect to the extent of the purchases.

In late 1970, Mr. Forester, for himself, his wife and five of the trusts he managed, decided on the basis of a security analyst's recommendation to invest trust assets in the paper industry. Purchases of the plaintiff's stock began at that time but were discontinued in April, 1971, because of an unusual opportunity to purchase a large block of stock in another paper company. However, that opportunity did not materialize, and some portion of the cash accumulated for the first investment was instead invested in plaintiff's stock in late July.* Beginning July 30, 1971, the same day that Mr. Forester had communicated by letter wih Mr. Rondeau, and for the next four trading days, Mr. Forester and the trusts he managed purchased over 20,000 shares of plaintiff's stock (not an unusual volume of transactions for the trusts involved).

Although any time a party purchases a substantial portion of a corporation's outstanding stock it is possible to infer that the purchaser is interested in obtaining control, I find that there is no concrete evidence in the record warranting a finding that Mr. Rondeau seriously considered obtaining control of the plaintiff corporation prior to the time that he conversed with his attorney by telephone, after receiving Mr. Forester's letter of July 30, 1971. I find that Mr. Rondeau and the other defendants did not engage in intentional covert, and conspiratorial conduct in failing to timely file the 13D schedule.

I find that Mr. Rondeau's purchases of plaintiff's stock has created concern on the part of the plaintiff's present management, some of the plaintiff's employees and some shareholders with respect to the consequences of a possible tender offer and subsequent change in control of the company, e.g., the future relationship that Mr. Rondeau might have with the Board, with long-time customers, and with trade unions. I further find that this anxiety may have been somewhat worsened by the rumors about Mr. Rondeau's intentions which resulted from his failure to articulate his purposes in a timely 13D Schedule.

Although the total amount of shares purchased was correctly stated in Mr. Rondeau's 13D Schedule filed on August 25, 1971 (66,577 shares), the allocation of shares among the Rondeau entities shown on said 13D Schedule was inaccurate. The record ownership of these shares is correctly reflected in the defendants' amendment of the 13D Schedule, filed on September 29, 1971:

	Number of Shares of Record and Beneficially
Francis A. Rondeau	34,679
Mosinee Cold Storage, Inc.	11,020
Francis Rondeau, Incorporated	7,060
Wausau Cold Storage Company, Inc.	3,600
Francis A. Rondeau Foundation, Incorporated	1,957
Rondeau & Company	4,600
Ronco	264
Mosinee Cold Storage, Inc., Wausau Cold Storage Company, Inc., and Francis Rondeau, Incorporated, as participating Employers in The Emjay Corporation Master Profit Sharing Plan dated October 14, 1968	3,397
	66,577

Item 3 of Schedule 13D requires a statement as to the filer's source and amount of funds or other consideration:

> State the source and amount of funds or other consideration used or to be used in making the purchases, and if any part of the purchase price or proposed purchase price is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, or trading the securities, a description of the transaction and the names of the parties thereto. 33 F.R. 11,016 (July 30, 1968) as amended by 33 F.R. 14,110 (Aug. 30, 1968).

In the 13D Schedule filed August 25, 1971, Mr. Rondeau described the sources of his funds as set out fully in the margin.[1] In the amendment filed September 29, 1971, Ron-

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[1] All purchases of the Issuer's common stock made to date have been financed as follows:

> 1. Approximately $598,000 from Francis A. Rondeau of which approximately $300,000 came from Mr. Rondeau's own funds and the remainder borrowed from Rondeau & Company on open account.
>
> 2. Mosinee Cold Storage, Inc. borrowed $30,000 from the First Wisconsin National Bank of Wausau on a 90-day note at 5¼% secured by certain securities owned by it and related companies named herein. This loan has been repaid.
>
> 3. Francis Rondeau, Incorporated borrowed $100,000 from the First Wisconsin National Bank of Wausau on a 90-day note at 5¼% secured by certain securities owned by it and related companies named herein. This loan has been repaid.
>
> 4. Rondeau & Company borrowed $307,000 from the First Wisconsin National Bank of Milwaukee at an annual interest rate of 6% secured by certain securities owned by it and related companies named herein. This loan has been repaid.
>
> NOTE: Of the funds identified in 1 to 4 above, approximately $865,500 was utilized to purchase common stock of the Issuer and the balance used to make purchases of securities of other corporations.

Francis A. Rondeau and one or more of his controlled corporations and other entities presently are considering investing approxdeau further amplified the sources of funds as set out in the margin.[2]

---

imately $3,600,000 of additional funds in the common stock of the Issuer. These funds are expected to be obtained as follows:

(a) $1,200,000 to be invested by Mosinee Cold Storage, Inc., out of proceeds to be received from the sale of real property located in Marathon County, Wisconsin; such transaction is expected to close within the next 12 months;

(b) Francis A. Rondeau and his associates propose to sell approximately $1,000,000 of marketable securities to provide additional funds for investment in common stock of the Issuer;

(c) The balance of the monies, if invested, will be borrowed although no commitments for any such borrowings or loans have been entered into or have gone beyond the negotiation and discussion stage.

[2] 1. With respect to Item 3, the undersigned, Mosinee Cold Storage, Inc., and Francis Rondeau, Incorporated, now state and aver that no part of the proceeds of loans received from First Wisconsin National Bank of Wausau as referred to in paragraphs 2 and 3 of said Item 3 were utilized for the purchase of common stock of the Issuer. However, it has now been determined that Mosinee Cold Storage, Inc. borrowed $50,000 on May 11, 1971, from First Wisconsin National Bank of Wausau at 5½% interest, secured by certain securities, certificates of deposit and insurance policies owned by it and related companies named in the Schedule 13D, and Wausau Cold Storage Company, Inc. borrowed $50,000 on June 29, 1971, from First Wisconsin National Bank of Wausau at 5½% interest, secured by certain securities, certificates of deposit and insurance policies owned by it and related companies named in the Schedule 13D. An undetermined portion of the proceeds of these loans were advanced by said corporations to Francis A. Rondeau and used by him to purchase shares of common stock of the Issuer. Both of the aforesaid loans have been fully repaid.

2. Further, with respect to Item 3, the undersigned, Rondeau & Company borrowed the aggregate sum of $307,000 at 6% annual interest from First Wisconsin National Bank of Milwaukee between May 10, 1971, and July 20, 1971, of which approximately $187,000 was used to purchase common stock of the Issuer in the name of Rondeau & Company and of Francis A. Rondeau and Francis A. Rondeau, Nominee. The above loans were secured by the collateral pledge to said Bank of shares of common stock of the Issuer and of other securities owned by Francis A. Rondeau and/or his associates identified in this Amended Schedule 13D. The loans from

About August 15, 1971, Mr. Rondeau sold 10,000 First Wisconsin Bankshares, which had a market value of $32/share or a total value of $320,000, to Mr. Tom Werner, pursuant to an agreement whereby Mr. Rondeau had the right to repurchase the shares within twelve months at his option, at the price of $32,000, plus interest at the rate of approximately 6%. I find that whether this sale with an option to repurchase is denominated a sale or a loan, Mr. Rondeau had no obligation to disclose this transaction in the 13D Schedule as the cash realized from the transaction was not obtained for the purpose of buying plaintiff's stock nor was it in fact so disbursed. I further find that Item 3 of the 13D Schedule, as amended, is adequate and does not contain misrepresentations of fact.

A few days after Mr. Rondeau's August 25, 1971, Schedule 13D was received by the plaintiff, plaintiff wrote to each of its shareholders and issued a press release calling attention to Mr. Rondeau's statement that he was considering a tender offer. For a few days after this press release, plaintiff's stock was quoted as high as $19-21/share. Within a few days it dropped back to the $12.50-$14 range, where it remained.

OPINION

Plaintiff first opposes defendants' motion on the grounds that there are genuine issues of fact which are unresolved;

First Wisconsin National Bank of Milwaukee were paid, in full, on August 27, 1971, with proceeds received by Francis A. Rondeau and/or his associates from the sale of securities other than shares of common stock of the Issuer.

3. Further, with respect to Item 3, Francis A. Rondeau states and avers that subsequent to August 9, 1971, he has had discussions with representatives of First Wisconsin National Bank of Milwaukee and Marine National Exchange Bank of Milwaukee relative to he and/or his associates obtaining loans for the purchase of additional shares of common stock of the Issuer. No commitment or agreements relative to any such borrowing has been received or entered into.

more particularly, that there is a genuine issue as to whether defendants' conduct was intentional, covert and conspiratorial and as to whether the 13D Schedule, filed by Rondeau, both in its original and amended form, misstates facts concerning his sources of financing purchases of plaintiff's stock. As set out in the above section entitled "Facts," I have made findings from the record herein on both of these issues in favor of the defendants.

Plaintiff also opposes defendants' motion for summary judgment on the grounds that the defendants have not established that they are entitled to judgment as a matter of law. The parties moving for summary judgment must not only establish that the material facts are not in dispute, but must also demonstrate that they are entitled to judgment as a matter of law. Fed. R. Civ. P. 56(e). All inferences are to be drawn against the movant and in favor of the party opposing the motion. 3 *Barron & Holtzoff, Federal Practice and Procedure* §1234.

Section 13(d) of the Securities and Exchange Act provides in part:

> Any person, who, after acquiring directly or indirectly the beneficial ownership of any equity security of a class which is registered . . . is directly or indirectly the beneficial owner of more than 5 percentum of such class shall, within ten days after such acquisition, send to the issuer of the security at its principal executive office . . ., send to each exchange where the security is traded, and file with the Commission, a statement containing such information, and such additional information, as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors. . . . 15 U.S.C. §78m(d)(1).

In the instant case, the defendants admit that by failing to file a 13D Schedule by May 27, 1971, they violated the

filing requirements of the Williams Act, 15 U.S.C. §78m. Defendants further urge, however, that because a legally sufficient 13D Schedule was subsequently filed, and in the absence of a deliberate, covert conspiracy to take over the plaintiff corporation, plaintiff is not entitled to any relief in this action. Defendants submit that an analysis of the language of §13(d) of the Securities and Exchange Act, of the legislative history of the Act and of the judicial interpretation of the statute reveals: (1) that §13(d) is a "notice statute," without provision for sanctions and that the requirement of notice has been satisfied by the late filing in the instant case; (2) that in the absence of deliberate and covert noncompliance with the requirements of the Act, and in the absence of a showing by the plaintiff of irreparable harm, the equitable relief requested by the plaintiff is inappropriate; and (3) that the imposition of sanctions in the instant case would constitute a misapplication of the Williams Act as a barrier to stockholders' democracy, perpetuating entrenched management without majority support.

The plaintiff contends that the violation conceded by the defendants warrants injunctive relief; that the plaintiff is not, as a matter of law, required to prove "irreparable injury" as an element of its claim for equitable relief; and that an appropriate injunction can be fashioned to meet the circumstances of this case.

The complaint alleges that plaintiff has suffered irreparable harm as a result of the defendants' failure to timely file the 13D Schedule. However, the plaintiff has not directed this court's attention to any evidentiary material in the voluminous record which would support a finding of irreparable harm. Although the defendant has the burden of proof upon a motion for summary judgment, the plaintiff may not rest upon the mere allegations of his pleadings to establish that there is a genuine issue of fact. Fed. R. Civ. P. 56(e). The defendant here has introduced testimony by both the President and the Chairman of the Board of the plaintiff corporation indicating that the damage sustained by the plaintiff from Mr. Rondeau's activities in general and his late filing of the 13D Schedule in particular, stems from the anxiety of its employees and shareholders about a possible future change in control of the corporation. Absent any other evidence, I must conclude that the plaintiff has not suffered "irreparable harm."

Although one court has stated in dicta that the absence of irreparable harm does not necessarily preclude injunctive relief where the public interest is involved (here the plaintiff asserts the public interest in private enforcement of the federal securities laws and in deterrence of noncompliance with disclosure requirements), *Sisak* v. *Wings & Wheels Express, Inc.*, 1971 CCH Fed. Sec. L., Rep. §92,991 at 90,670 (S.D.N.Y. 1970), other courts have expressly stated that a finding of irreparable harm is a prerequisite to injunctive relief. *See Ozark Airlines, Inc.* v. *Cox,* 326 F. Supp, 1113, 1118-1119 (E.D.Mo. 1971).

Judge Kaufman's analysis of the history and purposes of §13(d) is helpful in deciding what relief is appropriate for violations of the Act followed by subsequent compliance:

> The 1960's on Wall Street may best be remembered for the pyrotechnics of corporate takeovers and the phenomenon of conglomeration. Although individuals seeking control through a proxy contest were required to comply with section 14(a) of the Securities Exchange Act and the proxy rules promulgated by the SEC, and those making stock tender offers were required to comply with the applicable provisions of the Securities Act, before the enactment of the Williams Act there were no provisions regulating cash tender offers or other techniques of securing corporate control. According to the committee reports:

> > "The [Williams Act] would correct the current gap in our securities laws by amending the Securities Exchange Act of 1934 to provide for full disclosure in connection with cash tender offers and other techniques for accumulating large blocks of equity securities of publicly held companies." S. Rep. No. 550 at 4; H.R. Rep. No. 1711 at 4, U.S. Code Cong. & Admin. News p. 2814.
>
> Specifically, we were told, "the purpose of section 13(d) is to require disclosure of information by persons who have acquired a substantial interest, or increased their interest in the equity securities of a company by a substantial amount, within a relatively short period of time." S. Rep. No. 550 at 7; H.R.Rep.No. 1711 at 8, U.S. Code Cong. & Admin. News p. 2818. Otherwise, investors cannot assess the potential for changes in corporate control and adequately evaluate the company's worth. *See generally* Comment, Section 13(d) and Disclosure of Corporate Equity Ownership, 119 U. Pa.L.Rev. 853, 854-55, 858, 865-66 (1971).
>
> That the purpose of section 13(d) is to alert the marketplace to every large, rapid aggregation or accumulation of securities, regardless of technique employed, which might represent a potential shift in corporate control is amply reflected in the enacted provisions.

GAF Corporation v. *Milstein*, 453 F.2d 709, 717 (2nd Cir. 1971). The history of the Act, however, also clearly reveals that § 13(d) was not enacted to provide protection for management against raiders, as there is substantial disagreement as to whether tender offers and stock acquisitions in pursuit of control constitute a desirable and healthy aspect of stockholder democracy. *GAF Corporation* v. *Milstein,* 324 F. Supp. 1062, 1069-1070 (S.D.N.Y. 1971), *rev'd in part, aff'd in part,* 453 F.2d 709 (2nd Cir.

1971). *See* H.R. Report No. 1711 at 4, U.S. Code Cong. & Admin. News p. 2811-2821. *See also Bath Industries* v. *Blot,* 427 F.2d 97, 109 (7th Cir. 1970).

Even without concluding that irreparable harm is a prerequisite to relief, it would seem that the instant case provides a particularly inappropriate occasion to fashion equitable relief for the plaintiff. First, the only harm documented is the "anxiety" which could be expected to accompany any change in management, a predictable consequence of shareholder democracy. Congress, in enacting the Williams Bill, attempted to avoid tipping the balance of regulation either in favor of management or in favor of the person making the takeover bid. H.R. Report No. 1711, *supra* at 2813. Secondly, the record here does not reveal that the defendants engaged in a secret conspiracy to accumulate stock from unsuspecting shareholders before exposing their intention of gaining control in a 13D Schedule. Instead, the record indicates that defendants openly purchased substantial quantities of stock, that management and other brokers and businessmen were aware of these purchases, and that the defendants promptly complied with the Williams Act soon after becoming aware of the filing requirements and after their plans to attempt to obtain control crystallized. Finally, I note that all of the information required by the Williams Act has been available to both stockholders and management since September 29, 1971, and the record does not reveal that the defendants have proceeded with a tender offer.

The plaintiff cites the following passage from *Bath, supra,* to support its argument that the late filing of defendants' 13D Schedule neither cures nor vindicates the purpose of § 13(d):

> If defendant-appellants were in fact required to file statements . . . sometime near midsummer of 1969, the filing of 13D Schedules in October, 1969, may well be insufficient to cure the failure to file earlier. The purpose of the filing and notification provisions is to give investors and stockholders the opportunity to assess the insurgents' plans before selling or buying stock in the corporation. It additionally gives them the opportunity to hear from incumbent management on the merit or lack of merit of the insurgents' proposals. If the defendant-appellant's late filing is sufficient, then no insurgent group will ever file until news of their existence and plan leaks out and prompts a law suit. By that time is will be too late to avoid the evils which the Williams Act is designed to eliminate. *Bath, supra* at 113.

Although this language is broad and sweeping, it should be noted that the Court of Appeals in *Bath* was affirming the trial court's decision to grant a preliminary injunction, and emphasized that in this area, where a federal statute creates legal rights and only a general right to sue, the discretion of a district court to fashion remedies is broad. *Bath, supra* at 113.

Furthermore, the facts in *Bath* are distinguishable from the instant case. First, it must be noted that the trial court found that the plaintiff sustained irreparable injury as a result of the defendant's failure to timely file a 13D Schedule. *Bath Industries, Inc.* v. *Blot,* 305 F. Supp. 526, 537-539 (E. D. Wis. 1969); *Bath, supra* at 104. In *Bath,* the defendants conspired and agreed to obtain control of the corporation either by threat of or by a proxy battle timed to coincide with the expected award of a large governmental contract for which the corporation had been actively contending. Such a proxy fight would severely limit the corporation's chances of being awarded the contract and might consequently cause permanent and irreparable harm. Therefore, unlike here, in *Bath,* irreparable injury to the corporation, as distinguished from its present management, flowed from the covert conduct of the defendants, who secretly accumulated stock and solicited allies so that at the appropriate time they could confront management with a *fait accompli.* Plaintiffs in *Bath* clearly demonstrated that had the defendants filed a timely 13D Schedule, management would have been able to better protect the corporation from losing the contract. Furthermore, at the time of ruling on the preliminary injunction the trial court in *Bath* had not yet determined whether defendants had ever filed an adequate 13D Schedule. The court granted a preliminary injunction to "remain in effect until it is determined that the 13(d) statements that have been or will be filed by the defendants are legally sufficient." *Bath Industries, Inc.* v. *Blot,* 305 F. Supp. 296, 539. In the instant case I have found that the 13D Schedule filed is adequate.

The plaintiff also brings to my attention the decision in *Committee for New Management of Butler Aviation* v. *Widmark,* 335 F. Supp. 146 (E.D.N.Y. 1971). In that case, the court granted a preliminary injunction as relief for defendant's cross-motion asserting that one of the plaintiffs had violated § 13(d). However, the *Butler Aviation* case is distinguishable from the instant case in three material respects: first, the plaintiff there concealed his purchases of stock through the use of nominees so that his ownership did not appear on the corporation's stock transfer records; second, the plaintiff in *Butler Aviation* never filed the required 13D Schedule; and finally, the court's decision in that case immediately preceded the annual meeting of the company's shareholders, so there was no opportunity, as here, for the shareholders to be apprised by management of the information which should have been disclosed to them by the party accumulating stock by filing the 13D Schedule.

For these reasons, I conclude that although the plaintiff has established that the defendants have violated §13(d) of the Williams Act, the plaintiff is not entitled to equitable relief.

The plaintiff claims that the defendants' failure to file a 13D Schedule also violates §§ 14(e) and 10(b).

Section 14(e) provides in part:

> It shall be unlawful for any person to make any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or to engage in any fraudulent, deceptive, or manipulative acts or practices, in connection with any tender offer or request or invitation for tenders, or any solicitation of security holders in opposition to or in favor of any such offer, request, or invitation. 15 U.S.C. § 78n(e).

Neither the plaintiff nor the defendants assert that Rondeau has made a public tender offer. Nonetheless the plaintiff contends that the phrase "tender offer" should be construed to include the defendants' series of buy orders prior to the filing of the 13D Schedule in the relatively limited market for the plaintiff's stock. Furthermore, the plaintiff contends that the phrase "in connection with" is broad enough to encompass situations in which a tender offer is being considered.

The plaintiff concedes that it has no authority in point for either of these rather novel propositions. If the plaintiff's contention is based upon the alleged misstatement within the 13D Schedule as finally filed, I note the statement of the district court in *GAF Corp.* v. *Milstein,* 324 F. Supp. 1062 (S.D.N.Y. 1971), that § 14(e) was not intended to cover fraudulent misstatements in a § 13(d) filing when there has been in fact no public tender offer. *Id.* at 1073. On appeal the Court of Appeals indicated in a footnote that the tender offer transactions covered by § 14(e) are distinguishable from § 13(d) dealings and that the statutory scheme is as follows: § 14(d), 15 U.S.C. § 78n(d), requires disclosure by tender offerors; § 14(e), 15 U.S.C. § 78n(e), the companion section for § 14(d), declares that it is illegal to make false and misleading statements in connection with a § 14(d) tender offer; § 13(d), 15 U.S.C. § 78m(d), requires disclosure of acquisition of ownership by any direct or indirect means; and Congress has not enacted a parallel section, equivalent to § 14(e), for § 13(d). Nonetheless, the Circuit Court concluded that "the obligation to file truthful statements is implicit in the obligation to file with the issuer and *a fortiori,* the issuer has standing under § 13(d) to seek relief in the event of a false filing." *GAF Corporation* v. *Milstein,* 453 F.2d 709, 720n.22 (2nd Cir. 1971).

Whether I conclude that relief for false statements in 13D Schedules is afforded under § 14(e) as suggested by plaintiff or is implicit in § 13(d) as held by the 2nd Circuit, the plaintiff here is not entitled to relief on the basis of this contention, as I have found that the 13D Schedule, as amended, does not contain misrepresentations of material fact nor misleading statements.

I also conclude that plaintiff's assertion that defendants' failure to timely file a 13D Schedule is in itself a fraud and deceit under § 14(e) does not justify affording the plaintiff the relief requested. Under plaintiff's construction of § 14(e), the purchaser of stock "in connection with any tender offer" would, in order to avoid committing a fraud, have the same responsibility for prompt filing as is required both under § 13(d) and § 14(d). Even assuming that this rather bizarre construction of these sections in this overlapping manner is correct, I conclude that the restraints upon the granting of equitable relief implicit in the legislative history of § 13(d) and in the case law interpreting that section would also have to be applied to cases arising under § 14(e). Otherwise, a defendant's liability would depend upon the plaintiff's arbitrary choice of sections and the purposes of the Williams Act might well be frustrated. As discussed *supra,* I conclude that the plaintiff is not entitled to equitable relief either under § 13(d) or § 14(e).

The plaintiff also asserts that the defendants have violated Section 10(b) and Rule 10b-5. 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5. Section 10(b) provides:

> It shall be unlawful for any person . . . [t]o use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

Rule 10b-5 is as follows:

> It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,
>
> (a) To employ any device, scheme, or artifice to defraud,
>
> (b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or
>
> (c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

Even assuming that the plaintiff's construction of § 10(b) is proper, i.e. that either the filing of a misleading 13D Schedule or the failure to timely file a 13D Schedule violates § 10(b), as admitted by plaintiff in its brief there is serious question as to whether an issuer has standing to invoke § 10(b) for injunctive relief, when it has neither purchased nor sold securities. The plaintiff cites Judge

Friendly's comment in *General Time Corporation* v. *Talley Industries, Inc.*, 403 F.2d 159, 164 (2nd Cir. 1968): "we would not want to place our approval on a holding that under no circumstances can an issuer have standing to seek an injunction [under Section 10(b)]." Nonetheless, plaintiff has not cited any cases which would indicate that it does have standing under the circumstances of the instant case. In *Superintendent of Insurance* v. *Banker's Life & Casualty Co.*, 404 U.S. 6, 13n.10 (1971), the United States Supreme Court expressly refused to decide whether an issuer has standing under § 10(b) where the corporation was not a seller or buyer.

I conclude that in the instant case, where management is clearly involved in a fight for control of the corporation, it is inappropriate to afford the corporation standing to sue under the rationale that it is desirable to provide a means, in addition to the Commission, to assure private enforcement of the Commission's rules and regulations, promulgated to protect the intergrity of the marketplace and individual investors:

> It is generally inappropriate to impede a legitimate fight for the control of the management of a corporation. Where the corporation management faces a conflict of interest, and no direct connected interest of the corporation is to be vindicated by the suit, the protection of the objects of Rule 10b-5 through equitable intervention is better left to be administered by the federal administrative agency, the SEC, or other eligible complainants." *GAF* v. *Milstein*, 324 F. Supp. at 1072; *aff'd* 453 F.2d at 721.

Therefore, I conclude that the plaintiff does not have standing to assert the § 10(b) claim.

I further conclude that this decision in favor of all the defendants renders the motion to dismiss filed by two of the defendants moot and that consequently said motion to dismiss must be denied.

Accordingly, on the basis of the entire record herein, IT IS HEREBY ORDERED THAT the motion to dismiss is denied and that the motion for summary judgment in favor of all defendants is granted.

Entered this 13th day of February, 1973.

By The Court:
/s/ James E. Doyle
James E. Doyle
District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

Civil Action No. 71-C-335

[Caption Omitted]

Notice of Appeal

Notice is hereby given that Mosinee Paper Corporation, plaintiff above named, hereby appeals to the United States Court of Appeals for the Seventh Circuit from the judgment entered in this action on the 13th day of February, 1973.

Dated at Milwaukee, Wisconsin, February 21, 1973.

Laurence C. Hammond, Jr.
W. Stuart Parsons
By W. Stuart Parsons
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IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 73-1277

Mosinee Paper Corporation, a Wisconsin Corporation,
Plaintiff-Appellant
v.
Francis A. Rondeau, et al., *Defendants-Appellees*

Appeal from the United States District Court for the Western District of Wisconsin.

No. 71 C 335

James E. Doyle, *Judge*

Argued January 23, 1974—Decided July 16, 1974

Before Swygert, *Chief Judge*, Pell, *Circuit Judge*, and Perry, *Senior District Judge.*[*]

Swygert, *Chief Judge*. Plaintiff Mosinee Paper Corporation appeals from the grant of summary judgment entered in favor of defendants Francis A. Rondeau and various persons and entities controlled by him.[1] In the district court Mosinee Paper charged that Rondeau had violated section 13(d) of the Securities and Exchange Act of 1934, 15 U.S.C. § 78m(d), known as the Williams Act.[2] Rondeau

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[*] Senior District Judge Joseph Sam Perry of the Northern District of Illinois is sitting by designation.

[1] These consist of corporations and business associations owned or operated by Rondeau: Mosinee Cold Storage, Inc.; Francis Rondeau, Incorporated; Wausau Cold Storage Company, Incorporated; Rondeau Foundation; Rondeau & Company; George Rondeau, First Wisconsin National Bank of Wausau; and First Wisconsin National Bank of Milwaukee. In addition, Rondeau's son, George Rondeau, is a defendant to the instant action.

[2] Section 13(d) reads as follows:

> (d)(1) Any person who, after acquiring directly or indirectly the beneficial ownership of any equity security of a class

conceded the violation of section 13(d), admitting that he had purchased eight percent of the issued and outstanding common stock of Mosinee Paper during a period of four months without timely filing a Schedule 13D as required by section 13(d).

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which is registered pursuant to section 12 of this title, or any equity security of an insurance company which would have been required to be so registered except for the exemption contained in section 12(g)(2)(G) of this title, or any equity security issued by a closed-end investment company registered under the Investment Company Act of 1940, is directly or indirectly the beneficial owner of more than 5 per centum of such class shall, within ten days after such acquisition, send to the issuer of the security at its principal executive office, by registered or certified mail, send to each exchange where the security is traded, and file with the Commission, a statement containing such of the following information, and such additional information, as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors—

(A) the background and identity of all persons by whom or on whose behalf the purchases have been or are to be effected;

(B) the source and amount of the funds or other consideration used or to be used in making the purchases, and if any part of the purchase price or proposed purchase price is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, or trading such security, a description of the transaction and the names of the parties thereto, except that where a source of funds is a loan made in the ordinary course of business by a bank, as defined in section 3(a)(6) of this title, if the person filing such statement so requests, the name of the bank shall not be made available to the public;

(C) If the purpose of the purchases or prospective purchases is to acquire control of the business of the issuer of the securities, any plans or proposals which such persons may have to liquidate such issuer, to sell its assets to or merge it with any other persons, or to make any other major change in its business or corporate structure;

(D) the number of shares of such security which are

Mosinee Paper is a Wisconsin corporation, mainly engaged in manufacturing and selling paper products. Its principal place of business is located at Mosinee, Wisconsin. The company's only class of equity security, registered pursuant to section 12 of the Securities and Exchange Act of 1934, 15 U.S.C. § 781, is common stock, of which there were 806,177 shares outstanding as of August 31, 1971.

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beneficially owned, and the number of shares concerning which there is a right to acquire, directly or indirectly, by (i) such person, and (ii) by each associate of such person, giving the name and address of each such associate; and

(E) information as to any contracts, arrangements or understandings with any person with respect to any securities of the issuer, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guaranties of loans, guaranties against loss or guaranties of profits, division of losses or profits, or the giving or withholding of proxies, naming the persons with whom such contracts, arrangements, or understandings have been entered into, and giving the details thereof.

(d)(2) If any material change occurs in the facts set forth in the statements to the issuer and the exchange, and in the statement filed with the Commission, an amendment shall be transmitted to the issuer and the exchange and shall be filed with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(d)(3) When two or more persons act as a partnership, limited partnership, syndicate, or other group for the purpose of acquiring, holding, or disposing of securities of an issuer, such syndicate or group shall be deemed a "person" for the purposes of this subsection.

(d)(4) In determining, for purposes of this subsection, any percentage of a class of any security, such class shall be deemed to consist of the amount of the outstanding securities of such class, exclusive of any securities of such class held by or for the account of the issuer or a subsidiary of the issuer.

(d)(5) The Commission, by rule or regulation or by order, Rondeau made his first purchase of Mosinee Paper stock on April 5, 1971. By May 17, 1971 he had acquired 40,309 shares, some in his own name and some in the names of his controlled corporations and other entities. This number was more than five percent of Mosinee Paper's common stock outstanding.

The Williams Act required him to file with the Securities and Exchange Commission and mail to Mosinee Paper a 13D schedule as of May 27, 1971. Rondeau failed to file the schedule. He continued to acquire Mosinee Paper stock and by August 4, 1971 his acquisitions totaled 66,577 shares, about eight percent of Mosinee Paper's stock outstanding. On August 25, 1971 Rondeau filed a 13D schedule. An amended and supplemental schedule was filed on September 29, 1971.

In the district court, although admitting his violation of section 13(d), Rondeau contended that his failure to timely file a Schedule 13D stemmed from a lack of knowledge as to the existence of the reporting requirements of section 13(d) and not from any intention to avoid the disclosure requirements of the Act and thereby assist him in an effort to covertly gain control of Mosinee Paper. Rondeau argued that his violation of section 13(d) did not warrant the imposition of any remedy or equitable relief in view of the following circumstances: He unknowingly and unintentionally failed to file a Schedule 13D; his purchase of eight percent of the common stock was for investment purposes, not control; he did not formulate an intention to seek control of Mosinee Paper until after he was informed by his attorney in early August of the filing requirement under section 13(d); and he filed a Schedule 13D within a reasonable time after learning of his duty to file. The district court agreed with Rondeau's contention that despite his admitted violation of section 13(d) the grant of equitable relief was inappropriate under the circumstances. We take an opposite view.[3]

I

Rondeau claims that his failure to timely file Schedule 13D was a mere technical violation of the Act which was cured by the subsequent late filing in August of a Schedule

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may permit any person to file in lieu of the statement required by paragraph (1) of this subsection or the rules and regulations thereunder, a notice stating the name of such person, the number of shares of any equity securities subject to paragraph (1) which are owned by him, the date of their acquisition and such other information as the Commission may specify, if it appears to the Commission that such securities were acquired by such person in the ordinary course of his business and were not acquired for the purpose of and do not have the effect of changing or influencing the control of the issuer nor in connection with or as a participant in any transaction having such purpose or effect.

(d)(6) The provisions of this subsection shall not apply to—

(A) any acquisition or offer to acquire securities made or proposed to be made by means of a registration statement under the Securities Act of 1933;

(B) any acquisition of the beneficial ownership of a security which, together with all other acquisitions by the same person of securities of the same class during the preceding twelve months, does not exceed 2 per centum of that class;

(C) any acquisition of any equity security by the issuer of such security;

(D) any acquisition or proposed acquisition of a security which the Commission, by rules or regulations or by order, shall exempt from the provisions of this subsection as not entered into for the purpose of, and not having the effect of, changing or influencing the control or the issuer or otherwise as not comprehended within the purposes of this subsection.

[3] Mosinee Paper raises an additional issue challenging the adequacy of Rondeau's Schedule 13D disclosure. We find Rondeau's Schedule 13D as amended on September 29, 1971 to be legally sufficient and does not contain any material misstatement of facts. Accordingly, we hold plaintiff's challenge to the sufficiency of the disclosure to be without merit.

13D. He contends that the curative effect of the late filing derives from the fact that the overriding purpose of the Williams Act is to provide adequate notice and information to management and shareholders regarding an individual or group seeking control of a corporation prior to a tender offer or a proxy contest. Rondeau urges that the purpose of the Williams Act has not been violated by this allegedly "technical violation" in view of the circumstances that: (1) demonstrate that his purchase of eight percent of Mosinee Paper common stock was for investment purposes, not control, and subsequent to these purchases he was informed by his attorney of the Williams Act filing requirements whereupon he filed a Schedule 13D within a reasonable period of time; and (2) at no time prior or subsequent to filing the Schedule 13D had Rondeau engaged in a tender offer or proxy contest to attain control of Mosinee Paper. It is Rondeau's contention that, absent a showing of an intentional and knowing failure to file or an intent to secure control of the corporation, the failure to timely file a Schedule 13D, of itself, does not transgress the purpose of the Williams Act.

We do not agree with Rondeau's interpretation of the Williams Act for it tends to narrow and limit the Act well short of its intended reach. The legislative history of the Act indicates that it was "designed to require full and fair disclosure" to investors with respect to any "techniques for accumulating large blocks of equity securities of publicly held companies." 1968 U.S. Code Cong. & Admin. News, pp. 2813, 2814. Speaking directly to its intendment with regard to section 13(d) of the Act, Congress stated:

> The purpose of section 13(d) is to require disclosure of information by persons who have acquired a substantial interest, or increased their interest in the equity securities of a company by a substantial amount, within a relatively short period of time. 1968 U.S. Code Cong. & Admin. News, p. 2818.

We agree with the Second Circuit's analysis of the Act in *GAF Corp.* v. *Milstein*, 453 F.2d 709 (2d Cir. 1971), that "the purpose of section 13(d) is to alert the marketplace to every large, rapid aggregation or accumulation of securities, regardless of technique employed, which might represent a potential shift in corporate control. . . ." 453 F.2d at 717. To this observation we add what is self-evident from the language and legislative history of the Williams Act, the reporting requirements of section 13(d) apply regardless of the purchaser's purpose in acquiring the shares. The sweep of section 13(d) goes beyond the circumstances where the purchaser has formulated an intent to control, but also reaches that point when because of the size of the purchaser's holdings (having attained five percent beneficial ownership of a class of stock) and the fact that he acquired such holdings in a short amount of time, the purchaser portends the *potential* to effectuate a change in control. Under such conditions Congress has deemed it appropriate that investors and management be fully advised of this potential to effect control so that investors may evaluate and adequately assess the corporation's worth in view of the potential, while at the same time allowing management the opportunity to appropriately respond to any potential for a shift in control.[4]

Congress desired that investors and management be notified at the earliest possible moment of the potential for a shift in corporate control. To that end, acquisition of five percent of a class of stock was designated as a trigger to bring about full and fair disclosure. By failing to timely file, Rondeau effectively failed to disclose to investors and management the circumstances surrounding his potential to effect the control of Mosinee Paper while at the same time he continued to purchase securities in a market that had not been adequately apprised of such potential. Under the circumstances, Rondeau's failure to timely file was more than a mere technical violation of the Williams Act.

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[4] It is clear from the language of the Act that Congress intended to include within the scope of the reporting requirements those transactions entered into for investment purposes and not control. The Commission has the discretionary power to exempt from the provisions of section 13(d) any acquisition of securities which the Commission deems "as not entered into for the purpose of, and not having the effect of changing or influencing the control of the issuer . . . ." Section 13(d)(6)(D). In such a situation, in requesting the discretionary power of the Commission, the burden is on the acquirer of securities to establish through objective data that his acquisition is solely for investment purposes and does not possess the potential to influence the control of the issuer.

II

Rondeau contends that it would be improper to grant plaintiff's claim for equitable remedies in view that Mosinee Paper has suffered no harm, let alone irreparable harm by reason of his violation of section 13(d). In addition, Rondeau urges that granting the relief claimed by Mosinee Paper would run contrary to the design of the Williams Act to avoid "tipping the balance of regulation either in favor of management or in favor of the person making the takeover bid." 1968 U.S. Code Cong. & Admin. News, p. 2813.

Addressing ourselves to Rondeau's first assertion, we are of the view that having transgressed the Williams Act, Rondeau has indeed harmed Mosinee Paper; that is, pursuant to section 13(d)(1) Mosinee Paper as issuer was entitled to receive a timely filed Schedule 13D. To the extent that the schedule was filed late, Mosinee Paper was harmed for it did not timely receive the relevant information surrounding Rondeau's potential to effect control and was delayed in its efforts to make any necessary response to that potential. Moreover, Mosinee Paper need not show irreparable harm as a prerequisite to obtaining permanent injunctive relief in view of the fact that as issuer of the securities it is in the best position to assure that the filing requirements of the Williams Act are being timely and fully

complied with and to obtain speedy and forceful remedial action when necessary.[5]

We disagree with Rondeau's contention that a grant of relief to Mosinee Paper would tip the balance in favor of management thereby creating a weapon to be utilized by an alleged entrenched and inefficient management. The plaintiff seeks in the instant action to vindicate its statutory right to full and timely disclosure of the circumstances surrounding the potential to effect a change of control in its ownership and operations. Moreover, as previously indicated, Mosinee Paper is in a superior position to safeguard the interests of the investing public to assure that the market is receiving adequate and timely disclosure of relevant information required to be reported by section 13(d). Accordingly, in view of the investing public's interest and the right vested in Mosinee Paper to timely disclosure, we do not perceive this as a case where the scales would be tipped in favor of management in the event equitable relief is granted to remedy a clear violation of the terms and purpose of the Act.

III

Having considered all the circumstances concerning Rondeau's violation of section 13(d)—giving effect especially to the district judge's findings that "Mr. Rondeau and the other defendants did not engage in intentional covert, and conspiratorial conduct in failing to timely file the 13D schedule" and was unaccompanied by a tender offer or proxy solicitation—we instruct the district court enter a decree enjoining Rondeau and his associates from further violations of section 13(d) and that the 26,268 shares, representing three percent of Mosinee Paper common stock purchased between the due date of the Schedule 13D and prior to its actual filing, not be permitted to be voted with respect to any takeover, proxy contest, or vote for officers and membership on the board of directors for a period of five years. We deem such an injunctive degree appropriate to neutralize Rondeau's violation of the Act and to deny him the benefit of his wrongdoing. *Bath Industries, Inc.* v. *Blot,* 427 F.2d 97, 113 (7th Cir. 1970); *Chris-Craft Industries, Inc.* v. *Bangor Punta Corp.,* CCH Fed. Sec. L. Rep. '72-'73 Decisions ¶ 93, 816 at p. 93, 518 (2d Cir. 1973).

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[5] The plaintiff's position as prime enforcer of the Act emanates from the fact that a corporation has a continuous and ongoing interest in the identity and composition of its ownership and has the necessary resources, financial and otherwise, to assure compliance with the Act and to seek remedial relief where the provisions of the Act have been violated.

The summary judgment in favor of the defendants is reversed, and the cause is remanded for further proceedings consistent with this opinion. Costs on appeal are assessed against the defendants.

PELL, *Circuit Judge,* dissenting. The basic issue presented to this court on appeal is whether the district court erred in granting summary judgment to the defendants. The plaintiff, in the conclusion to its original brief, asserts that the "erratic, inconsistent responses to deposition questions both as between witnesses and by the same witness (Mr. Rondeau) renders it impossible to determine the facts and the appropriate scope of the relief to be granted without live testimony and cross-examination." The majority opinion finds in effect no necessity for any evidentiary hearing but, presumably taking the facts as found by the district court, it reverses that court and directs the entry on remand of a remedial injunction, which, because of the implicit acceptance of the district court's factual findings, can only have been based upon a highly technical violation of the Williams Act, one which I cannot conceive justifies the harsh injunctive penalty to be inflicted.

The Williams Act by its terms does not provide any penalties for its violation, nor does it mandate any civil remedy. While I would not gainsay that the courts may properly fashion a remedy for a violation of the Act, I do not conceive that Congress intended that the punishment should do otherwise than fit the crime. Therefore, assuming there was no genuine issue of material fact presented to the district court, a separate issue which does cause me concern, I am unable to concur in the result reached by the majority. Accordingly, I respectfully dissent.

The majority, by directing the entry of an injunction against the defendants, indicates that for the purpose of the disposition of this appeal it can be taken that there is no genuine issue of material fact requiring a further evidentiary hearing. Assuming that posture, at least *arguendo,* I therefore turn to the facts. These are adequately set forth in the detailed opinion of the district court and need not be repeated, except as pertinent, here. *Mosinee Paper Corporation* v. *Rondeau,* 354 F. Supp. 686 (W.D. Wis. 1973).

Upon completion of an analysis of those facts, and there is no question that the defendants technically violated the Act in that they did purchase more than 5% of plaintiff's outstanding common stock without filing the requisite Schedule 13D on a timely basis, I am left with the conviction that the majority decision stripped to its essentials is that the management interests of a corporation can cause the enjoining for a substantial period of time of a shareholder's ordinary rights in all stock purchased between the date the purchases exceed 5% and the date the 13D Schedule is filed, irrespective of motivation, irrespective of irreparable harm to the corporation, and irrespective of whether the purchases were detrimental to investors in the company's stock. The violation timewise is apparently all that is needed to trigger this result. I do not conceive that this was the purpose of the Act.

I agree with the statement in the majority opinion that the "reporting requirements of section 13(d) apply regardless of the purchaser's purpose in acquiring the shares." But the violation is conceded by all concerned. We are instead confronting the matter of remedy and indeed whether any remedy is appropriate or needed.

The plaintiff below apparently regarded issues as significant which the majority opinion finds are of no consequence. Thus, plaintiff contended that there was a genuine issue of material fact in dispute as to whether defendants' conduct (i.e., their motivation) was intentional, covert, and conspiratorial. 354 F. Supp. at 692. The majority opinion is willing to assume that it was not. The plaintiff alleged in its complaint and claims on appeal irreparable harm. 354 F. Supp. at 693. The majority opinion seems to find harm, although not categorizing it as irreparable, but states that in any event the plaintiff need not show irreparable harm as a prerequisite to obtaining permanent injunctive relief.

As I read the majority opinion, the rationale for this conclusion is along the line that the issuer of the stock is serving in the capacity of a private attorney general to assure that the filing requirements of the Act are met. I would not quarrel with the right to institute litigation for this purpose. "[T]he issuer has not only the resources, but the self-interest so vital to maintaining an injunctive action." *GAF Corporation* v. *Milstein,* 453 F.2d 709, 719 (2d Cir. 1971), *cert. denied,* 406 U.S. 910 (1972). In speaking of this, however, we are dealing with the matter of standing. In the present appeal, on the other hand, we are past that threshold issue and are concerned with the appropriateness of a remedy for a violation of the Act. Certainly here the standing was not being exercised for the purpose of securing the filing of the 13D Schedule. That schedule was filed on August 25, 1971, and the present action was not brought until September 2, 1971.

Before looking further at the facts, which apparently the majority accepted as they were found to be by the district court, it is well to recall that we are considering the propriety of the use of an equitable remedy, the injunction. In so doing we start with the cardinal principle that "[t]he basis of injunctive relief in the federal courts has always been irreparable harm and inadequacy of legal remedies." *Beacon Theatres* v. *Westover,* 359 U.S. 500, 506-7 (1959). (Footnote omitted.) I am unaware of any reason for lowering the standards in the use of the injunction and agree with Judge Doyle's observation of what the law is in this respect:

> "Although one court has stated in dicta that the absence of irreparable harm does not necessarily preclude injunctive relief where the public interest is involved . . . , Sisak v. Wings & Wheels Express, Inc., 1971 CCH Fed. Sec. L. Rep. § 92, 991 at 90, 670 (S.D.N.Y. 1970), other courts have expressly stated that a finding of irreparable harm is a prerequisite to injunctive relief. *See* Ozark Air Lines, Inc. v. Cox, 326 F. Supp. 1113, 1118-1119 (E.D. Mo. 1971)." 354 F. Supp. at 694-5.

This court in *Bath Industries, Inc.* v. *Blot,* 427 F.2d 97, 113 (7th Cir. 1970), after carefully analyzing the facts before it, observed that "we cannot say that the court erred in finding that irreparable harm would be done to [the issuer] and its stockholders unless defendants were enjoined from now proceeding with their plan. . . ." I do not find the basis for such a statement as to irreparable harm in the present case, certainly not on the basis of the facts before the court in the summary judgment disposition. In *Bath,* as Judge Doyle demonstrates so clearly in distinguishing it, 354 F. Supp. at 695, "irreparable injury to the corporation, as distinguished from its present management, flowed from the covert conduct of the defendants, who secretly accumulated stock and solicited allies so that at the appropriate time they could confront management with a *fait accompli.*" (Emphasis in the original.)

Turning to the facts of the present case as contained in the district court's opinion, I note the following which I would deem to be of significance in determining the necessity of the injunctive relief directed by the majority opinion.

Francis Rondeau, who was the moving force of the defendants, determined in the early months of 1971 that plaintiff's stock would be a good investment because it was underpriced. He made his first purchase of 500 shares early in April of that year. The president and the board chairman of plaintiff both learned in the same month of several purchases by Rondeau. When the company records showed that the holdings of defendants, the associational identity of which was known to plaintiff, had reached 18,000 shares, plaintiff's president called Rondeau by telephone and inquired as to his purpose in purchasing the stock. Rondeau stated that he felt the stock was underpriced and was a good investment; that he intended to continue to purchase shares and might acquire up to 40,000 shares (under 5% of the outstanding stock); and that he was "perfectly happy with the operation."

Unless we draw an inference from the slim basis of the statement that he was going to buy less than 5% of the stock, an inference I do not deem this court on appeal may properly draw for purposes of fashioning a remedy, we would not be able to say that the record refutes the good faith of Rondeau's statement to the company president.

During 1971, a company which provided management, accounting, and investment services to the majority shareholders of plaintiff kept a cumulative total of acquisitions by Rondeau which were reported to the board chairman of the plaintiff. Rondeau did not know that he was required to file a Schedule 13D when his holdings exceeded 5% until he consulted his attorney on the matter about July 30, 1971, immediately after receiving a letter from the plaintiff's board chairman stating that Rondeau's activities in plaintiff's stock may have created problems under the federal securities laws.

Thereafter, Rondeau had his accountants work continuously to provide the information needed for the Schedule 13D. He placed no further orders for plaintiff's stock at any time after July 30, 1971. Rondeau had been advised in the past that he did not need to file anything with the SEC until his stock holdings in any one company exceeded 10%, and this indeed had been the law until December of 1970, when the Act was amended to lower the requirement from 10% to 5%. As a matter of fact, the plaintiff's board chairman was also unfamiliar with the requirement of the Williams Act until a few days before he wrote the letter to Rondeau on July 30, 1971.

Moreover, Rondeau's acquisitions were not secretive. It was common knowledge, "street talk" among brokers, bankers, and businessmen in the community, that Rondeau was purchasing plaintiff's stock in substantial quantities.

There was no concrete evidence in the record warranting a finding that Rondeau seriously considered obtaining control of plaintiff corporation prior to August 1971.

In the Schedule 13D filed August 25, 1971, it was indicated that defendants *at that time* were considering a tender offer. A few days after receipt of this schedule, plaintiff wrote to each of its shareholders and issued a press release calling attention to the statement that a tender offer was being considered by the Rondeau interests.

I cannot do otherwise than to agree with Judge Doyle on the basis of the facts as established by him, which are not disputed by the majority opinion, that there was no basis for a determination of irreparable injury to the plaintiff. To grant an injunction on the sole basis of a belated filing appears to me to be exalting form over substance, to be bringing an artificial and unduly restrictive sanction into the law of securities, and to be ignoring the real purpose of the Williams Act, which "was designed for the benefit of investors and not to tip the balance of regulation either in favor of management or in favor of the person seeking corporate control," *GAF Corporation, supra* at 717 n. 16, particularly in the situation when corporate control had not yet been an objective at the time of the unreported acquisitions. In sum, without irreparable harm being shown injunctive relief is not warranted.

The stultifying effect of too rigid an application of remedies in the present area is illuminatively set forth in Comment, *The Courts and the Williams Act: Try a Little Tenderness,* 48 N.Y.U.L. Rev. 991 (1973). The Comment is devoted to the impact of judicial decisions regarding the disclosure requirements on tender offers; its introductory observations are pertinent to our present question (at 991-92):

> "A cash tender offer in 'a publicly made invitation addressed to all shareholders of a corporation to tender their shares for sale at a specified price.' It is the only realistic means by which a person or group can acquire corporate control when opposed by hostile management. In the favorable economic and legal environment of the 1960's, the cash tender offer became a favorite tool of companies seeking diversification or profitable investments; the inevitable advent of federal regulation, in the form of the Williams Act disclosure requirements, did not dampen its dramatic growth. In 1973, however, courts began to show an increasing tendency to use disclosure requirements to halt and destroy contested cash tender offers—a tendency so pronounced that cash tender offers, at least when contested by incumbent management, may soon become extinct.
>
> "This imminent extinction is not deliberately contrived; it is the work of well-meaning courts which strive only to protect shareholders called upon to tender their securities. In protecting them, however, courts

> have demanded unrealistically high standards of disclosure about the offer. In shaping relief, moreover, courts have inadvertently failed to preserve the delicate balance necessary for the tender offer's survival. As a result, even if the violation is slight and easily cured the offer almost always dies, never to be resurrected." (Footnotes omitted.)

In the present case, we have an even weaker situation than that contemplated in the Comment. Here, there had been acquisition of an amount of stock less than the amount originally required under the Act for reporting, one immeasurably removed from any realistic potential for control, and an acquisition found to be based solely on investment purposes. Section 13(d)(1)(C) requires the person filing to disclose any intention to acquire control. At the time the 5% was exceeded, there would have been nothing to report except the meagre facts of the acquisition and the source of the funds used.

Persons purchasing stock as an investment because it is underpriced rapidly lose interest when the latter status disappears as it ordinarily does when a tender offer or proxy fight emerges. That the purpose of the Act was to protect the shareholders by affording them notice of the prospect of an artificially induced price resulting from a struggle for control rather than being directed at the mere investor is reflected in Section 13(d)(6)(D), which empowers the commission to exempt any acquisition or proposed acquisition "as not entered into for the purpose of, and not having the effect of, changing or influencing the control of the issuer or otherwise as not comprehended within the purpose of this subsection."

I am further concerned by the far reaching scope of the injunction directed to be entered by the majority opinion. The restriction against voting the 26,268 shares is not directed against Rondeau or his associates but is apparently to be applied on an *in rem* basis to the stock itself. Further, this taint is to be for a period of five years without specification of the effective beginning date, which would mean that if it is to run for five years from the date of the entry of the injunction at least some of the normal prequisites of the shares would have been neutralized for a total of nearly eight years.

The discussion to this point has been predicated upon the facts as stated by Judge Doyle, as to which the majority opinion expressed no question of correctness. On that basis, I would dissent from the opinion for the reasons stated.

I nevertheless have a serious reservation as to the propriety of affirmance. The problem, not an uncommon one at the appellate level, is the propriety of the granting of summary judgment when one party vigorously argues the existence of a dispute as to issues of material fact. The problem is not made easier of solution by the use of findings in the district court opinion. This court has observed in other cases that the use of findings is "ill advised since it would carry an unwarranted implication that a fact question was presented." *General Teamsters, Chauffeurs & Helpers Union* v. *Blue Cab Co.*, 353 F.2d 687, 689 (7th Cir. 1965). I am convinced, however, that the district court intended nothing more than to state what the uncontroverted facts were for decision.

A second aspect of the problem is that if the determination of the motion for summary judgment required the trial court to choose between conflicting possible inferences from the evidence, the motion should not have been granted. *Sarkes Tarzian Inc.* v. *United States*, 240 F.2d 467, 470 (7th Cir. 1957). Inferences, however, have to be drawn not from vaporous supposition but from facts established in the record. The parties had a full opportunity to develop that record, and the plaintiff deposed without success those who would have been able to have placed Rondeau in the position of covertly attempting to wrest control if such had been his intention at the time of acquisition.

While the question may be a close one, the well reasoned opinion of Judge Doyle, cast in the light of the purpose of the Act, persuades me that summary judgment was proper. While the standards of whether a summary judgment should be granted should not vary according to the type of the case, nevertheless, since "in too many situations, target management is pursuing its own interests to the exclusion of those of the investors," Comment, *The Courts and the Williams Act: Try a Little Tenderness*, *supra* at 1018, the investing public does have an interest in prompt disposition of the challenges arising in the factual situation here presented, an object lending itself to accomplishment by the summary judgment route.

That gamemanship is becoming the order of the day in the area of acquisition-for-control of securities law is illustrated by a recent Second Circuit opinion, *Missouri Portland Cement Company* v. *Cargill, Incorporated*, —— F.2d ——, (Docket Nos. 74-1024 and 74-1025, June 10, 1974), in which Judge Friendly speaking for the court stated:

> "This appeal illustrates the growing practice of companies that have become the target of tender offers to seek shelter under § 7 of the Clayton Act, 15 U.S.C. §18. Drawing Excalibur from a scabbard where it would doubtless have remained sheathed in the face of a friendly offer, the target company typically hopes to obtain a temporary injunction which may frustrate the acquisition since the offering company may well decline the expensive gambit of a trial or, if it persists, the long lapse of time could so change conditions that the offer will fail even if, after a full trial and appeal, it should be determined that no antitrust violation has been shown. Such cases require a balancing of public and private interests of various sorts. Where, as here, the acquisition would be neither horizontal nor vertical, there are 'strong reasons for not making the prohibitions of section 7 so extensive as to damage seriously the market for capital assets, or so broad

> as to interfere materially with mergers that are procompetitive in their facilitation of entry and expansion that would otherwise be subject to serious handicaps.' These reasons are especially compelling when the target company fails to show that the alleged antitrust violation would expose it to any readily identifiable harm." Slip opinion at 4050-51 (footnote omitted).

In connection with a claimed Williams Act violation, Judge Friendly observed:

> "Courts should tread lightly in imposing a duty of self-flagellation on officers with respect to matters that are known as well, or almost as well, to the target company; some issues concerning a contested tender offer can safely be left for the latter's riposte." Slip opinion at 4088 (footnote omitted).

Subsequent to oral argument in this cause, counsel brought to the attention of the court a per curiam order of the Eighth Circuit in *Tri-State Motor Transit Co.* v. *National City Lines,* No. 73-1867 (April 4, 1974). That court affirmed the district court's granting of a summary judgment motion to a defendant charged with a section 13(d) violation of failure to file, which motion was granted on the ground that the stipulated facts revealed no deliberate covert and conspiratorial noncompliance with the requirements of 13(d). In affirming, the court of appeals stated that injunctive relief was not warranted, citing Judge Doyle's opinion in the present case. Inasmuch as the Eighth Circuit order, although apparently a case of first impression on the present issue at the appellate level, was, under the rule of that circuit, an unpublished order not to be cited, and because of the lack of any factual development in the order, I have not relied upon the case as authority. I do note the case, however, because its disposition as contrasted with that in the majority opinion in the present case suggests the possibility of a split of authority between circuits.

For the reasons herein indicated, I would affirm the judgment of the district court.

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit.

MOSINEE PAPER CORPORATION

STATEMENT FILED PURSUANT TO SECTION 13(d) OF THE SECURITIES EXCHANGE ACT OF 1934

SCHEDULE 13D

Item 1. *Security and Issuer.*

Common Stock, $5.00 par value, Mosinee Paper Corporation (Issuer), Mosinee, Wisconsin 54455.

Item 2. *Identity and Background.*

I. (a) Francis A. Rondeau
P.O. Box 10
Mosinee, Wisconsin 54455

(b) Maple Ridge Road
Mosinee, Wisconsin 54455

(c) President and General Manager of Mosinee Cold Storage, Inc., P.O. Box 10, Mosinee, Wisconsin 54455

Cold storage and food commodities.

(d) (i) President
Wausau Cold Storage Company, Inc.
832 Cleveland Avenue
Wausau, Wisconsin 54401

Cold storage of food commodities

Prior to 1961 to date

(ii) Vice President and Director
First Wisconsin National Bank of Wausau
400 Scott Street
Wausau, Wisconsin 54401

General Banking

1963 to date

(iii) President and Director
Francis Rondeau, Incorporated
P.O. Box 10
Mosinee, Wisconsin 54455

Packaging and processing of natural cheese products

Prior to 1961 to date

(e) Francis A. Rondeau has not, during the past ten years, been convicted in any criminal proceeding.

II. (a) Mosinee Cold Storage, Inc.
P.O. Box 10
Mosinee, Wisconsin 54455

(b) Not applicable

(c) Cold storage of food commodities.

(d) Not applicable

(e) Mosinee Cold Storage, Inc. has not, during the past ten years, been convicted in any criminal proceeding.

Information called for by Item 2 with respect to the officers and directors of Mosinee Cold Storage, Inc. is as follows:

(a)-(e) Francis A. Rondeau, President and Director (The information concerning Francis A. Rondeau contained in I (a)-(e) above is incorporated by reference herein as if fully set forth herein).

(a) Homer Ayvazzadeh
P.O. Box 10
Mosinee, Wisconsin 54455

(b) 1010 Maple Street
Wausau, Wisconsin 54401

(c) Secretary and Director and head of quality control of Mosinee Cold Storage, Inc., P.O. Box 10, Mosinee, Wisconsin 54455 (cold storage of food commodities); Vice-President, Secretary, Director and head of quality control of Francis Rondeau, Incorporated, P.O. Box 10, Mosinee, Wisconsin 54455 (packaging and processing of natural cheese products).

(d) (i) Chemical Engineer
Armour & Company
St. Paul, Minnesota
1962-1964

Meat packer and processor

(ii) Secretary and Director and head of quality control
Mosinee Cold Storage, Inc.
P.O. Box 10
Mosinee, Wisconsin 54455

1964 to date

Cold storage of food commodities

(iii) Vice President, Secretary, Director and head of quality control, Francis Rondeau, Incorporated, P.O. Box 10, Mosinee, Wisconsin 54455

1964 to date

Packaging and processing of natural cheese products

(a) Marie Rondeau (wife of Francis A. Rondeau)
P.O. Box 10
Mosinee, Wisconsin 54455

(b) Maple Ridge Road
Mosinee, Wisconsin 54455

(c) Principal occupation is housewife, but also serves as (i) Treasurer and Director of Mosinee Cold Storage, Inc., P.O. Box 10, Mosinee, Wisconsin 54455 (cold storage of food commodities), (ii) Treasurer and Director of Francis Rondeau, Incorporated, P.O. Box 10, Mosinee, Wisconsin 54455 (packaging and processing of natural cheese products), and (iii) Secretary and Director of Wausau Cold Storage Company, Inc., 832 Cleveland Avenue, Wausau, Wisconsin 54401 (cold storage of food commodities).

(d) (i) 1961-date—housewife

(ii) 1961-date—Treasurer and Director of Mosinee Cold Storage, Inc., P.O. Box 10, Mosinee, Wisconsin 54455 (cold storage of food commodities)

(iii) 1961-date—Treasurer and Director of Francis Rondeau, Incorporated, P.O. Box 10, Mosinee, Wisconsin 54455 (packaging and processing of natural cheese products)

(iv) 1961-date—Secretary and Director, Wausau Cold Storage Company, Inc., 832 Cleveland Avenue, Wausau, Wisconsin 54401 (cold storage of food commodities)

(e) Mrs. Rondeau has not, during the past ten years, been convicted in any criminal proceeding.

III. (a) Francis Rondeau, Incorporated
P.O. Box 10
Mosinee, Wisconsin 54455

(b) Not applicable

(c) Purchasing and processing of natural cheese products

(d) Not applicable

(e) Francis Rondeau, Incorporated has not, during the past ten years, been convicted in any criminal proceeding.

Information called for by Item 2 with respect to the officers and directors of Francis Rondeau, Incorporated is as follows:

(a)-(e) Francis A. Rondeau, President and Director (The information concerning Francis A. Rondeau contained in I (a)-(e) above is incorporated by reference herein as if fully set forth herein).

(a)-(e) Homer Ayvazzadeh, Vice President, Secretary and Director (The information concerning Homer Ayvazzadeh contained in II (a)-(e) above is incorporated by reference herein as if fully set forth herein).

(a)-(e) Marie Rondeau, Treasurer and Director (The information concerning Marie Rondeau contained in II (a)-(e) above is incorporated by reference herein as if fully set forth herein).

IV. (a) Wausau Cold Storage Company, Inc.
832 Cleveland Avenue
Wausau, Wisconsin 54401

(b) Not applicable

(c) Cold storage of food commodities

(d) Not applicable

(e) Wausau Cold Storage Company, Inc. has not, during the past ten years, been convicted in any criminal proceeding.

Information called for by Item 2 with respect to the officers and directors of Wausau Cold Storage Company, Inc. is as follows:

(a)-(e) Francis A. Rondeau, Chairman of the Board, President and Director (The information concerning Francis A. Rondeau contained in I (a)-(e) above is incorporated by reference herein as if fully set forth herein).

(a)-(e) Marie Rondeau, Secretary and Director (The information concerning Marie Rondeau contained in II (a)-(e) above is incorporated by reference herein as if fully set forth herein).

(a) George Rondeau
832 Cleveland Avenue
Wausau, Wisconsin 54401

(b) 1004 Arnold Street
Rothschild, Wisconsin 54474

(c) Manager, Treasurer and Director of Wausau Cold Storage Company, Inc., 832 Cleveland Avenue, Wausau, Wisconsin 54401
Cold storage of food commodities

(d) (i) 1961-1965, Student, Spencerian College, Milwaukee, Wisconsin

(ii) 1965-April, 1967, Sales Representative, Folgers Coffee Co., Kansas City, Missouri, coffee producers

(iii) April, 1967-date, Manager, Treasurer and Director, Wausau Cold Storage Company, Inc., 832 Cleveland Avenue, Wausau, Wisconsin 54401

Cold storage of food commodities

(e) George Rondeau has not, during the past ten years, been convicted in any criminal proceeding.

V. (a) Rondeau Foundation
P.O. Box 10
Mosinee, Wisconsin 54455

(b) Not applicable

(c) Charitable corporation

(d) Not applicable

(e) Rondeau Foundation has not, during the past ten years, been convicted in any criminal proceeding.

Rondeau Foundation is a Wisconsin non-profit charitable corporation organized in 1956. Information with respect to the officers and directors of the Rondeau Foundation is as follows:

(a)-(e) Francis A. Rondeau, President and Director (The information concerning Francis A. Rondeau contained in I (a)-(e) above is incorporated by reference herein as if fully set forth herein).

(a)-(e) Marie Rondeau, Secretary and Director (The information concerning Marie Rondeau contained in II (a)-(e) above is incorporated by reference herein as if fully set forth herein).

(a)-(e) George Rondeau, Treasurer and Director (The information concerning George Rondeau contained in IV (a)-(e) above is incorporated by reference herein as if fully set forth herein).

VI. (a) Rondeau & Company
P.O. Box 10
Mosinee, Wisconsin 54455

(b) Not applicable

(c) Rondeau & Company is a limited partnership composed of one general partner and 9 limited partners. It owns real estate and securities.

(d) Not applicable

(e) Rondeau & Company has not, during the past ten years, been convicted in any criminal proceeding.

Information with respect to the general and limited partners of Rondeau & Company is as follows:

(a)-(e) George Rondeau, General Partner (The information concerning George Rondeau contained in IV (a)-(e) above is incorporated by reference herein as if fully set forth herein).

(a)-(e) Francis A. Rondeau, Limited Partner (The information concerning Francis A. Rondeau contained in I (a)-(e) above is incorporated by reference herein as if fully set forth herein).

(a)-(e) Marie Rondeau, Limited Partner (The information concerning Marie Rondeau contained in II (a)-(e) above is incorporated by reference herein as if fully set forth herein).

(a)-(e) Homer Ayvazzadeh, Limited Partner (The information concerning Homer Ayvazzadeh contained in II (a)-(e) above is incorporated by reference herein as if fully set forth herein).

(a) John Rondeau (Limited Partner)
P.O. Box 10
Mosinee, Wisconsin 54455

(b) Half Moon Lake
Mosinee, Wisconsin 54455

(c) Production Manager, Francis Rondeau, Incorporated, P.O. Box 10, Mosinee, Wisconsin 54455
Packaging and processing of natural cheese products

(d) 1962-1966, Student, St. Norbert's College, Green Bay, Wisconsin

1966-1968, Sales Representative, Shell Oil Company, Des Moines, Iowa

1968 to date, production manager, Francis Rondeau, Incorporated, P.O. Box 10, Mosinee, Wisconsin 54455

(e) John Rondeau has not, during the past ten years, been convicted in any criminal proceeding.

(a) Frank Rondeau (Limited Partner)
704 Kinglet Avenue
Wausau, Wisconsin 54401

(b) 704 Kinglet Avenue
Wausau, Wisconsin 54401

(c) Sales Representative, Hallmark Greeting Card Company, Kansas City, Missouri

Greeting cards

(d) 1965-1969, Student, Spencerian College, Milwaukee, Wisconsin

1969 to date, Sales Representative, Hallmark Greeting Card Company, Kansas City, Missouri

Greeting cards

(e) Frank Rondeau has not, during the past ten years, been convicted in any criminal proceeding.

(a) Earl Rondeau (Limited Partner)
Maple Ridge Road
Mosinee, Wisconsin 54455

(b) Maple Ridge Road
Mosinee, Wisconsin 54455

(c) Student, Mosinee High School, Mosinee, Wisconsin

(d) None

(e) Earl Rondeau has not, during the past ten years, been convicted in any criminal proceeding.

(a) Carol Rondeau Ayvazzadeh (Limited Partner)
1010 Maple Street
Wausau, Wisconsin 54401

(b) 1010 Maple Street
Wausau, Wisconsin 54401

(c) Housewife

(d) Housewife for over past ten years.

(e) Carol Rondeau Ayvazzadeh has not, during the past ten years, been convicted in any criminal proceeding.

(a) Paul Rondeau (Limited Partner)
c/o Rubuen Cocoa Restaurant
Phoenix, Arizona

(b) Apartment #227
Canlan Apartments
5145 North 7th Street
Phoenix, Arizona 85014

(c) Assistant Manager, Rubuen Cocoa Restaurant, Phoenix, Arizona

Restaurant

(d) (i) September 1967—January 1971, Student, St. Norbert's College, Green Bay, Wisconsin

(ii) January 1971 to date—Assistant Manager, Rubuen Cocoa Restaurant, Phoenix, Arizona

Restaurant

(e) Paul Rondeau has not, during the past ten years, been convicted in any criminal proceeding.

(a) Rosylind Rondeau (Limited Partner)
18410 Jamaica Avenue
Hollis, New York 11423

(b) Apartment #2D
433 East 83rd Street
New York, New York 10028

(c) Designer, Ideal Toy Company, 18410 Jamaica Avenue, Hollis, New York 11423

Toy manufacturer

(d) (i) 1961-1963, Designer, Hallmark Greeting Card Company, Kansas City, Missouri

Greeting cards

(ii) 1963-1965, Designer, Playskool Toy Company, Chicago, Illinois

Toy manufacturer

(iii) 1965-1967, Designer Tootsie Toy Division of Strombecker Corporation, Chicago, Illinois

Toy manufacturer

(iv) 1968, Designer, Sylvestries, Chicago, Illinois Commercial Designers and Decorators

(v) 1969 to date, Designer, Ideal Toy Company, 18410 Jamaica Avenue, Hollis, New York 11423

Toy manufacturer

(e) Rosylind Rondeau has not, during the past ten years, been convicted in any criminal proceeding.

NOTE: Francis A. Rondeau, through stock ownership, corporate offices, and family relationships, controls Mosinee Cold Storage, Inc., Wausau Cold Storage Company, Inc. and Francis Rondeau, Incorporated. In addition, he also controls the Rondeau Foundation and Rondeau & Company. Information with respect to Francis A. Rondeau as required by Items (a)-(e) of Item 2 of this Schedule 13D is set forth in I (a)-(e) above and is incorporated herein by reference as if fully set forth herein.

Item 3. *Source and Amount of Funds or Other Consideration.*

All purchases of the Issuer's common stock made to date have been financed as follows:

1. Approximately $598,000 from Francis A. Rondeau of which approximately $300,000 came from Mr. Rondeau's own funds and the remainder borrowed from Rondeau & Company on open account.

2. Mosinee Cold Storage, Inc. borrowed $30,000 from the First Wisconsin National Bank of Wausau on a 90-day note at 5¼% secured by certain securities owned by it and related companies named herein. This loan has been repaid.

3. Francis Rondeau, Incorporated borrowed $100,000 from the First Wisconsin National Bank of Wausau on a 90-day note at 5¼% secured by certain securities owned by it and related companies named herein. This loan has been repaid.

4. Rondeau & Company borrowed $307,000 from the First Wisconsin National Bank of Milwaukee at an annual interest rate of 6% secured by certain securities owned by it and related companies named herein. This loan has been repaid.

NOTE: Of the funds identified in 1 to 4 above, approximately $865,500 was utilized to purchase common stock of the Issuer and the balance used to make purchases of securities of other corporations.

Francis A. Rondeau and one or more of his controlled corporations and other entities presently are considering investing approximately $3,600,000 of additional funds in the common stock of the Issuer. These funds are expected to be obtained as follows:

(a) $1,200,000 to be invested by Mosinee Cold Storage, Inc., out of proceeds to be received from the sale of real property located in Marathon County, Wisconsin; such transaction is expected to close within the next 12 months;

(b) Francis A. Rondeau and his associates propose to sell approximately $1,000,000 of marketable securities to provide additional funds for investment in common stock of the Issuer;

(c) The balance of the monies, if invested, will be borrowed although no commitments for any such borrowings or loans have been entered into or have gone beyond the negotiation and discussion stage.

Item 4. *Purpose of Transaction.*

Francis A. Rondeau determined during early part of 1971 that the common stock of the Issuer was undervalued in the over-the-counter market and represented a good investment vehicle for future income and appreciation. Francis A. Rondeau and his associates presently propose to seek to acquire additional common stock of the Issuer in order to obtain effective control of the Issuer, but such investments as originally determined were and are not necessarily made with this objective in mind. Consideration is currently being given to making a public cash tender offer to the shareholders of the Issuer at a price which will reflect current quoted prices for such stock with some premium added. In the event control of the business of the Issuer is obtained, Francis A. Rondeau and his associates have no intention to liquidate the business of the Issuer, sell its assets, merge it with any other group or entity, or make any other major change in its business or corporate structure except with respect to consideration being given to management changes in an effort to provide a Board of Directors which is more representative of all of the shareholders, particularly those outside of present management, in order to improve such management with the intent of attempting to better assure the stockholders' equity growth and payment of increased dividends, if possible.

All such purchases were effected through registered broker-dealers in the over-the-counter market at prevailing prices and were made over a period of time from April 5, 1971 through August 4, 1971.

Item 5. *Interest in Securities of the Issuer.*

	No. of Shares Owned of Record and Benefically
Francis A. Rondeau (individually and as agent for companies listed below)	45,911
Associates:	
Mosinee Cold Storage, Inc. P.O. Box 10 Mosinee, Wisconsin 54455	7,250
Francis Rondeau, Incorporated P.O. Box 10 Mosinee, Wisconsin 54455	7,800
Wausau Cold Storage Company, Inc. 832 Cleveland Avenue Wausau, Wisconsin 54401	1,800
Rondeau Foundation P.O. Box 10 Mosinee, Wisconsin 54455	516
Rondeau & Company P.O. Box 10 Mosinee, Wisconsin 54455	3,300
Total	66,577

Within the past 60 days, Francis A. Rondeau has purchased 10,974 shares of the Issuer and his associate, Rondeau & Company, has purchased 1,000 shares. Neither Francis A. Rondeau nor any of his associates named above have any right to acquire, directly or indirectly, any additional shares.

Item 6. *Contracts, Arrangements, or Understandings With Respect to Securities of the Issuer.*

None

Item 7. *Persons Retained, Employed or to be Compensated.*

Not applicable

Item 8. *Material to be Filed as Exhibits.*

Not applicable

I certify that to the best of my knowledge and belief, the information set forth in this statement is true, complete and correct.

August 25, 1971

/s/ Francis A. Rondeau
Francis A. Rondeau

Mosinee Cold Storage, Inc.

By /s/ Francis A. Rondeau
Francis A. Rondeau

Francis Rondeau, Incorporated

By /s/ Francis A. Rondeau
Francis A. Rondeau

Wausau Cold Storage Company, Inc.

By /s/ Francis A. Rondeau
Francis A. Rondeau

Rondeau Foundation

By /s/ Francis A. Rondeau
Francis A. Rondeau

Rondeau & Company

By /s/ Francis A. Rondeau
Francis A. Rondeau

MOSINEE PAPER CORPORATION

AMENDMENT TO STATEMENT FILED PURSUANT TO SECTION 13(d) OF THE SECURITIES EXCHANGE ACT OF 1934

AMENDMENT TO SCHEDULE 13D HERETOFORE FILED

This Amended Schedule 13D is hereby made and filed in order to amend, clarify and supplement the Schedule 13D of the undersigned, dated August 25, 1971. This Amended Schedule 13D has been required because all of the transactions concerning the purchase of common stock of the Issuer by Francis A. Rondeau and his associates were not as of August 25, 1971, fully accounted for and recorded and full description thereof was not at that date possible. In addition, a further review of such transactions has revealed that some additional disclosures should be made and minor corrections to such Schedule 13D specified.

1. With respect to Item 3, the undersigned, Mosinee Cold Storage, Inc., and Francis Rondeau, Incorporated, now state and aver that no part of the proceeds of loans received from First Wisconsin National Bank of Wausau as referred to in paragraphs 2 and 3 of said Item 3 were utilized for the purchase of common stock of the Issuer. However, it has now been determined that Mosinee Cold Storage, Inc. borrowed $50,000 on May 11, 1971, from First Wisconsin National Bank of Wausau at 5½% interest, secured by certain securities, certificates of deposit and insurance policies owned by it and related companies named in the Schedule 13D, and Wausau Cold Storage Company, Inc. borrowed $50,000 on June 29, 1971, from First Wisconsin National Bank of Wausau at 5½% interest, secured by certain securities, certificates of deposit and insurance policies owned by it and related companies named in the Schedule 13D. An undetermined portion of the proceeds of these loans were advanced by said corporations to Francis

A. Rondeau and used by him to purchase shares of common stock of the Issuer. Both of the aforesaid loans have been fully repaid.

2. Further, with respect to Item 3, the undersigned, Rondeau & Company borrowed the aggregate sum of $307,000 at 6% annual interest from First Wisconsin National Bank of Milwaukee between May 10, 1971, and July 20, 1971, of which approximately $187,000 was used to purchase common stock of the Issuer in the name of Rondeau & Company and of Francis A. Rondeau and Francis A. Rondeau, Nominee. The above loans were secured by the collateral pledge to said Bank of shares of common stock of the Issuer and of other securities owned by Francis A. Rondeau and/or his associates identified in this Amended Schedule 13D. The loans from First Wisconsin National Bank of Milwaukee were paid, in full, on August 27, 1971, with proceeds received by Francis A. Rondeau and/or his associates from the sale of securities other than shares of common stock of the Issuer.

3. Further, with respect to Item 3, Francis A. Rondeau states and avers that subsequent to August 9, 1971, he has had discussions with representatives of First Wisconsin National Bank of Milwaukee and Marine National Exchange Bank of Milwaukee relative to he and/or his associates obtaining loans for the purchase of additional shares of common stock of the Issuer. No commitment or agreements relative to any such borrowing has been received or entered into.

4. With respect to Item 4, concerning the purpose of the transactions reported in the Schedule 13D, Francis A. Rondeau concluded during the early part of 1971 that the common stock of the Issuer was under-valued, that is, it was selling below its true value in the over-the-counter market and accordingly was a good investment for further income and appreciation. Francis A. Rondeau and his associates commenced their purchases of the common stock of the Issuer early in April, 1971 with the intent of holding the stock for investment purposes. The price at which Francis A. Rondeau and his associates were able to purchase the common stock of the Issuer did not change materially in the months of April, May, June and July, and Mr. Rondeau and his associates continued to purchase common stock of the Issuer believing it to be a good investment. As more common stock of the Issuer was accumulated by Mr. Rondeau and his associates, they began to give some consideration to the composition of the Board of Directors of the Issuer and the persons who exercised actual control of the Issuer's affairs, but at no time prior to early August did Mr. Rondeau or his associates come to any definitive conclusions respecting control of the Issuer or give any serious consideration to any plan to attempt to obtain, or to affect, the control of the Issuer.

Upon being advised in early August of 1971 for the first time that their purchases of the Issuer's common stock were of sufficient magnitude to require the filing of this Schedule 13D, Mr. Rondeau and his associates consulted with legal counsel and learned that to file this Schedule, they would be required to state the purpose for which they had acquired and would continue to acquire common stock of the Issuer. Upon receiving additional advice on means that might be employed either to gain control of the Issuer or affect the composition of its Board of Directors, Mr. Rondeau and his associates for the first time gave serious consideration to making a tender offer for the purchase of additional shares of the common stock of the Issuer.

Consideration is currently being given to making a public cash tender offer to the shareholders of the Issuer at a price which will reflect current quoted prices for such stock, plus some premium. Consideration is also being given to asking other owners of the common stock of the Issuer who may not choose to sell their shares to vote their shares in support of directors nominated or suggested by Mr.

Rondeau and his associates. However, no plans to obtain proxies have been formulated, nor has it finally been determined whether or how to make a cash tender offer or solicit proxies. In the event control of the business of the Issuer is obtained, Francis A. Rondeau and his associates have no intention to liquidate the business of the Issuer, sell its assets, merge it with any other group or entity, or make any other major change in its business or corporate structure except consideration will be given to management changes in an effort to provide a Board of Directors which is more representative of and responsive to all of the shareholders, particularly those outside of present management, and in order to improve operating management for the purpose of assuring growth of stockholders' equity and payment of increased dividends.

All such purchases were effected through registered broker-dealers in the over-the-counter market at prevailing prices and were made over a period of time from April 5, 1971 through August 4, 1971.

5. With respect to Item 5, as of the date hereof, shares of common stock of the Issuer are owned of record and beneficially by Francis A. Rondeau and his associates as follows:

	Number of Shares of Record and Beneficially
Francis A. Rondeau	34,679
Mosinee Cold Storage, Inc.	11,020
Francis Rondeau, Incorporated	7,060
Wausau Cold Storage Company, Inc.	3,600
Francis A. Rondeau Foundation, Incorporated	1,957
Rondeau & Company	4,600
Ronco	264
Mosinee Cold Storage, Inc., Wausau Cold Storage Company, Inc., and Francis Rondeau, Incorporated, as participating Employers in The Emjay Corporation Master Profit Sharing Plan dated October 14, 1968	3,397
	66,577

Ronco is a limited partnership of which Francis A. Rondeau is the General Partner and his seven minor grandchildren are the limited partners. Its address is P.O. Box 10, Mosinee, Wisconsin 54455. This partnership operates as an investment entity purchasing and selling securities and other investments. Neither Ronco, nor any partner thereof, has, during the past ten years, been convicted in any criminal proceeding. None of the limited partners, all of them being minors, has any employment experience.

The Emjay Corporation Master Profit Sharing Plan is a qualified trust under Sections 401(a) and 501(a) of the Internal Revenue Code and by Joinder Agreement dated April 28, 1970, Mosinee Cold Storage, Inc., Wausau Cold Storage, Inc. and Francis Rondeau, Incorported, became participating Employers thereunder for the benefit of their respective employees. Such trust was organized under date of October 14, 1968, and Stanley J. Matek whose address is 622 North Cass Street, Milwaukee, Wisconsin 53202, is the trustee of such Plan. George Rondeau, Marie Rondeau and Homer Ayvazzadeh are members of the Administrative Committee of such Plan. Mr. Matek resides at 2835 North Summit Avenue, Milwaukee, Wisconsin 53211, and his present principal occupation and employment is Executive Director of The Mental Health Planning Committee of Milwaukee County whose address is 8855 West Watertown Plank Road, Milwaukee, Wisconsin 53226. He has held such employment since July 1, 1969. From February 1, 1968, to July 1, 1969, Mr. Matek was Associate Director of the same agency. Prior to that time and since 1961, Mr. Matek was a seminary student at Sacred Heart Monastery, Hales Corners, Wisconsin, and did graduate study at Marquette University and the University of Wisconsin.

6. With respect to Item 6, from time to time, starting in the late summer of 1971 and continuing to the present time, Francis A. Rondeau and his associates have had telephone and personal discussions with other persons who own common stock of the Issuer. The names of such persons, as best as can be recalled by Mr. Rondeau and his associates, are listed below. Most of these discussions were originated by the other party to the discussion. They involved such matters as the true value of the common stock of the Issuer, the composition of its Board of Directors, the person or persons who exercise effective control of the Board of Directors, the possibility of changing control of the corporation and the future prospects of Mosinee Paper Company. In no instance did Mr. Rondeau or his associates solicit, ask for or obtain from any of the persons listed below, or any other shareholder of Mosinee Paper Company, any proxy or agreement to vote stock, agreement or understanding to purchase or sell stock, or agreement or understanding to assist or cooperate with Mr. Rondeau or his associates. Nor have Mr. Rondeau or his associates obtained from any shareholder of Mosinee Paper Company any formal or informal, explicit or implicit, or other agreement or understanding, arrangement or contract respecting the securities of the Issuer. Accordingly, in this Item 6, as well as in other Items of this Schedule, no other persons or firms' names can or should be listed, nor can or should any contracts, arrangements or understandings be set forth. The persons referred to are:

Mr. Earl Bachman
203 Water Street
Mosinee, Wisconsin

Miss Margaret Dessert
614 4th Street
Mosinee, Wisconsin

Mr. Jack Altenberg
Route 5
Mosinee, Wisconsin

Mr. Orin Boeyink
301 Water Street
Mosinee, Wisconsin

Mr. William Yeshek
Minocqua
Wisconsin

Mr. Robert Seith
Gulf States Paper Company
Tuscaloosa, Alabama

I certify that to the best of my knowledge and belief, the information set forth in this statement is true, complete and correct.

September , 1971.

____
Francis A. Rondeau

MOSINEE COLD STORAGE, INC.

By ______________________________
Francis A. Rondeau

FRANCIS RONDEAU, INCORPORATED

By ______________________________
Francis A. Rondeau

WAUSAU COLD STORAGE COMPANY, INC.

By ______________________________
Francis A. Rondeau

RONDEAU FOUNDATION

By ______________________________
Francis A. Rondeau

RONDEAU & COMPANY

By ______________________________
Francis A. Rondeau

RONCO

By ....
Francis A. Rondeau

The Emjay Corporation Master Profit Sharing Plan for the benefit of Employees of Mosinee Cold Storage, Inc., Wausau Cold Storage Company, Inc., and Francis Rondeau, Incorporated

By ....
Stanley J. Matek, Trustee

Supreme Court, U. S.
FILED
NOV 12 1974
MICHAEL RODAK, JR., CLERK

No. 74-415

In the Supreme Court of the United States

OCTOBER TERM, 1974

FRANCIS A. RONDEAU,
Petitioner,

vs.

MOSINEE PAPER CORPORATION,
Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF OF RESPONDENT

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In the
Supreme Court of the United States

October Term, 1974

No. 74-415

FRANCIS A. RONDEAU,
Petitioner,
vs.
MOSINEE PAPER CORPORATION,
Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF OF RESPONDENT

STATEMENT OF THE CASE*

This case arose under certain amendments to the Securities Exchange Act of 1934 ("the Act"), known as the Williams Act (Act of July 29, 1968, Pub. L. No. 90-439, 82 Stat. 456, codified [in relevant part] at 15 U.S.C. §78m(d)).

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* Only matters which respondent considers were inadequately or misleadingly treated in petitioners' statement of the case (Petition at 8-9) are presented in this statement.

Section 13(d) of the Williams Act, 15 U.S.C. §78m(d) was created ". . . to close a gap in the disclosure requirements of existing securities laws by requiring full disclosure by persons or groups who 'purchase by direct acquisition or by tender offers * * * substantial blocks of the securities of publicly held companies.'" *Bath Industries, Inc.* v. *Blot,* 427 F.2d 97, 102 (7th Cir. 1970). Specifically, "the purpose of section 13(d) is to require disclosure of information by persons who have acquired a substantial interest, or increased their interest in the equity securities of a company by a substantial amount, within a relatively short period of time." S.Rep. No. 550 at 7; H.R.Rep. No. 1711 at 8, U.S. Code Cong. & Admin. News p. 2818. "Otherwise, investors cannot assess the potential for changes in corporate control and adequately evaluate the company's worth." *GAF Corp.* v. *Milstein,* 453 F.2d 709, 717 (2nd Cir.), cert. den., 406 U.S. 910 (1972). *See generally* Comment, Section 13(d) and Disclosure of Corporate Equity Ownership, 119 U.Pa.L. Rev. 853 (1971).

Under section 13(d), a person acquiring beneficial ownership of more than 5% of the shares of an issuer must within ten days file with the SEC and mail to the issuer a Schedule 13D containing detailed information as to his identity, the identities of his associates in the acquisition, their backgrounds, holdings, financing and purposes in acquiring the stock.

Petitioner Francis A. Rondeau, described by his attorneys in the district court as a "successful and knowledgeable businessman,"* made his first purchase of respondent Mosinee Paper Corporation's common stock (500 shares) on April 5, 1971. By May 17, 1971** he had acquired 40,309 shares, some in his own name, some in the names of corporations and other entities controlled by him. That number of shares constituted more than 5% of Mosinee's common stock outstanding. Ten days later, on May 27, Rondeau was required by law to file with the Securities and Exchange Commission and mail to Mosinee the Schedule 13D. But he did not. Instead, for a period of 112 days, from May 27 to August 4, 1971, Rondeau, six corporations and the partnership which he controlled bought 16,384 more shares of Mosinee stock at relatively low prices from investors who might well have refused to sell the stock or demanded a higher price had they known of Rondeau's purpose to obtain or consider obtaining effective control of Mosinee (a purpose disclosed when he finally filed on August 25, 1971).

Mosinee commenced action in the district court on September 2, 1971, seeking (among other things) damages and permanent injunctive relief. There was fairly extensive discovery. On December 24, 1971, the defendants filed a motion for summary judgment, which Mosinee opposed. On February 13, 1973, Judge Doyle entered his Opinion and Order for entry of summary judgment in defendants' favor. P.A. 15. The Court of Appeals disagreed, holding that Rondeau's failure to file created precisely the kind of situation the Williams Act was designed to preclude:

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* Brief in Support of Defendants' Motion for Summary Judgment, Appeal Doc. No. 15, p. 4.

** Petitioners misleadingly state that "[o]n July 9, 1971 respondent's stock register indicated that petitioner controlled more than 5% of its issued and outstanding stock." (Petition at 8). That is true. But the statute is not triggered by what happens on the "stock register"—it is triggered by an acquisition of more than 5%. That concededly happened on May 17, 1971.

> "By failing to timely file, Rondeau effectively failed to disclose to investors and management the circumstances surrounding his potential to effect the control of Mosinee Paper while at the same time he continued to purchase securities in a market that had not been adequately apprised of such potential. Under the circumstances, Rondeau's failure to timely file was more than a mere technical violation of the Williams Act." P. A. 31.

Petitioners contend: (1) that granting relief against a section 13(d) violation when no "deliberate, covert and conspiratorial conduct" has been shown placed the Seventh Circuit Court of Appeals in conflict with the Eighth; (2) that the Seventh Circuit's holding that Mosinee's being "irreparably injured" was not a prerequisite to injunctive relief "presents an important question which should be settled by the Court"; and (3) that the Court of Appeals' holding as to irreparable injury "probably" conflicts with the applicable case law of this Court.

For the reasons stated below, we respectfully submit that the petition lacks merit.

ARGUMENT

I.

THERE IS NO SPLIT OF AUTHORITY BETWEEN CIRCUITS ON THE QUESTION WHETHER "DELIBERATE, COVERT AND CONSPIRATORIAL CONDUCT" IS REQUISITE TO INJUNCTIVE RELIEF FOR VIOLATION OF THE FEDERAL SECURITIES LAWS.

A. The Per Curiam Order of the Eighth Circuit Which Petitioners Cite as Creating a Conflict Between Circuits Has No Precedential Value.

Astonishingly, petitioners' claim that there exists a conflict among circuits is premised upon a *per curiam* affirmance by the Court of Appeals for the Eighth Circuit which the Eighth Circuit itself specifically determined had "no precedential value,"* and which to Seventh Circuit Judge Pell (dissenting below) suggested only the "possibility" of a split of authority between circuits. P.A. 45. The *per curiam* order was entered in *Tri-State Motor Transit Co.* v. *National City Lines,* No. 73-867 (8th

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* Rule 14 of the Court of Appeals for the Eighth Circuit provides in relevant part:

> "Rule 14. Affirmed or enforced without opinion. When the Court determines that any one or more of the following circumstances exists and is dispositive of a matter submitted to the Court for decision: * * * (4) that no error of law appears; and the Court also determines that an opinion *would have no precedential value,* the judgment or order may be affirmed or enforced without opinion.
>
> "In such case, the Court may in its discretion enter either of the following orders: *'Affirmed. See Rule 14,'* or 'Enforced. See Rule 14.'" (Emphasis supplied.)

The *per curiam* affirmance of the Eighth Circuit in *Tri-State* states:

> "Affirmed. *See* Rule 14 of the Rules of this Court." (A. 3).

Cir. April 4, 1974). Since the Eighth Circuit also directed that the order was "not to be printed or published" (A. 3), we have appended it to this brief for the convenience of this Court. As Judge Pell also noted, there is no factual development in the order (P.A. 45), the Eighth Circuit having observed: "It is axiomatic that the issuance of injunctive relief is committed to the trial court's discretion." (A. 3). A "possibility" of a split of authority created by a decision without precedential value does not warrant issuance of a writ of *certiorari.*

B. The Seventh Circuit's Decision Is Consistent With the Relevant and Considered Decisions of Other Courts of Appeal.

If as petitioners suggest relief may be granted for a section 13(d) violation only when there is "deliberate, covert and conspiratorial conduct," then the statutory purpose

> "to alert the market place to every large, rapid aggregation or accumulation of securities, *regardless of technique employed,* which *might* represent a *potential* shift in corporate control"*

is completely vitiated.

Courts of Appeals which have considered the question have held as did the Seventh Circuit in this case that the state of mind and motivation of the securities law violator is not determinative of whether or not injunctive relief can be granted.

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* *GAF Corp.* v. *Milstein,* 453 F.2d 709, 717 (2d Cir.), *cert. den.* 406 U.S. 910 (1972). (Emphasis supplied).

For example, in *SEC* v. *Great American Industries, Inc.,* 407 F.2d 453 (2d Cir.), *cert. den.* 395 U.S. 920 (1969) the SEC sought injunctive relief against the repetition of allegedly inadvertent errors in Great American's SEC form 8-K reports.* Judge Friendly said:

> "The statute places the duty of filing correct reports on the issuer; while inadvertence and prompt correction after complaint are mitigating circumstances and may affect liability for damages, they do not defeat the SEC's right to injunctive relief." 407 F.2d at 457.

In *Gerstle* v. *Gamble-Skogmo, Inc.,* 478 F.2d 1281 (2d Cir. 1973) the Second Circuit held that the standard of culpability in suits for damages for violation of the proxy rules** does not require establishment of "any evil motive or even reckless disregard of the facts." 478 F.2d at 1301. The court reasoned that whereas section 10(b) of the Act* "emphasizes the prohibition of fraudulent conduct on the part of insiders to a securities transaction . . . in section 14(a) Congress was somewhat more concerned with protection of the outsider whose proxy is being solicited," 478 F.2d at 1299—just as in section 13(d) Congress was more concerned with protecting outside investors who could not otherwise "assess the potential for changes in corporate control and adequately evaluate the company's worth." *GAF Corp.* v. *Milstein,* 453 F.2d 709, 717 (2d Cir. 1971).** The Second Circuit also pointed out in distinguishing section 10(b) cases from section 14(a) cases that the former often relate to statements with re-

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* Form 8-K is used for current reports filed pursuant to Section 13 or 15(d) of the Act, SEC Rule 13a-11 and 15d-11, 17 C.F.R. §§ 240.13(a)-11 and 240.15(d)-11.

** Section 14(a) of the Act, 15 U.S.C. § 78n, makes it unlawful for any person to solicit any proxy "in contravention of such rules and regulations as the [Securities and Exchange] Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors." The SEC promulgated Rule 14a-9(a), 17 C.F.R. § 240.14a-9(a), prohibiting solicitation by means of a proxy statement "containing any statement which, at the time and in light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication . . . which has become false or misleading."

---

* 15 U.S.C. §78j(b), pursuant to which the SEC adopted Rule 10b-5, 17 C.F.R. §240.10b-5, which broadly proscribes fraud in connection with the purchase or sale of a security. In the Second Circuit liability for violation of Rule 10b-5 requires proof of "scienter" —that is, "willful or reckless disregard for the truth." *Lanza* v. *Drexel & Co.,* 479 F.2d 1277, 1306 (2d Cir. 1973). *Contra, Ellis* v. *Carter,* 291 F.2d 270, 274 (9th Cir. 1961); *Royal Air Properties, Inc.* v. *Smith,* 312 F.2d 210, 212 (9th Cir. 1962); *Stevens* v. *Vowell,* 343 F.2d 374, 379-380 (10th Cir. 1965); *Myzel* v. *Fields,* 386 F.2d 718, 734-735 (8th Cir. 1967), *cert. denied,* 390 U.S. 951 (1968); *City National Bank* v. *Vanderboom,* 422 F.2d 221, 229-230 (8th Cir.), *cert. denied,* 399 U.S. 905 (1970). Cf. *SEC* v. *Van Horn,* 371 F.2d 181, 185 (7th Cir. 1966).

** Indeed, the Williams Act was enacted as a companion to section 14(a):

> "Although individuals seeking control through a proxy contest were required to comply with section 14(a) of the Securities Exchange Act and the proxy rules promulgated by the SEC, and those making stock tender offers were required to comply with the applicable provisions of the Securities Act, before the enactment of the Williams Act there were no provisions regulating cash tender offers or other techniques of securing corporate control." *GAF Corp.* v. *Milstein,* 453 F.2d at 717.

spect to important business and financial developments, issued by corporations without legal obligation to do so, and that imposition of too liberal a standard of culpability would deter this desirable activity. This consideration does not exist where, under section 14(a) as under section 13(d), the filing is required. 478 F.2d at 1300.

Petitioners cite *SEC* v. *Culpepper,* 270 F.2d 241 (2d Cir. 1959), *SEC* v. *Universal Service Association,* 106 F.2d 232 (7th Cir. 1939) and *U.S.* v. *W. T. Grant Co.,* 345 U.S. 629 (1935) for the proposition that "even the Securities and Exchange Commission . . . is not entitled to injunctive relief unless it proves that there is a reasonable expectation of future violations" (Petition at 10). The continued viability of this test is open to question. See *SEC* v. *Great American Industries, Inc.,* 407 F.2d 453 (2d Cir.), *cert. denied* 395 U.S. 920 (1969). Moreover, this Court said in *U.S.* v. *W. T. Grant Co., supra*:

> "The chancellor's decision is based on all the circumstances; his discretion is necessarily broad and a strong showing of abuse must be made to reverse it. To be considered are the bona fides of the expressed intent to comply, the effectiveness of the discontinuance and, in some cases, the character of the past violations." 345 U.S. at 633.

The Seventh Circuit had before it an extensive record of deposition testimony and molded its decree to the necessities of the particular case, as required by *Hecht Co.* v. *Bowles,* 321 U.S. 321, 329-30 (1944), letting the "punishment fit the crime" as suggested in the context of the federal securities laws by the Second Circuit in *Electronic Specialty Co.* v. *International Controls Corp.,* 409 F.2d 937, 947 (2d Cir. 1969). "It is for the federal courts 'to adjust their remedies so as to grant the necessary relief' where federally secured rights are invaded." *J. I. Case Co.* v. *Borak,* 377 U.S. 427, 433 (1964)

In any event, the cases cited by petitioners deal only with the question when it is appropriate expressly to enjoin future violations. They are wholly inapposite to the Court of Appeals' direction that the district court should enter a remedial decree prohibiting voting of those shares purchased in violation of the Act for a period of five years "to neutralize Rondeau's violation of the Act and to deny him the benefit of his wrongdoing" (P.A. 33), as was done in *Chris-Craft Industries, Inc.* v. *Bangor Punta Corp.,* 480 F.2d 341 (2d Cir.), *cert. den.* 414 U.S. 979 (1973).

II.

IRREPARABLE INJURY TO THE PRIVATE PARTY SEEKING INJUNCTIVE RELIEF IS NOT ESSENTIAL WHERE THAT PARTY IS ACTING TO VINDICATE THE PUBLIC INTEREST IN ENFORCEMENT OF A FEDERAL REGULATORY SCHEME.

Petitioners suggest that a "cornerstone of equitable law" was "overturned" and that conflict with applicable decisions of this Court was created by the Court of Appeals' holding that Mosinee, the corporate entity, need not suffer "irreparable injury" as a prerequisite to injunctive relief. Petitioners ignore the context in which this case arose. Mosinee's action was to enjoin violation of a federal securities law enacted by Congress to protect the investor's interest in disclosure of facts essential to informed investment decision-making. This Court has held:

> " 'Courts of equity may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to do when only private interests are involved.' " *U.S.* v. *First National City Bank,* 379 U.S. 378, 383 (1965), quoting *Virginian D. Co.* v. *Federation,* 300 U.S. 515, 552 (1937).

In vindication of the "paramount public interest" in enforcement of the federal securities laws,[*] the Courts of Appeals have observed this principle by analytically balancing the interests involved instead of restricting inquiry to the particular interest of the party seeking the injunction:

> "Finally, in balancing the equities, the public interest must be considered. If G&W is in fact proceeding in violation of the antitrust and securities laws, a preliminary injunction would serve the public interest as much as A&P's private interests. In this regard, by asserting these claims, A&P is assuming a dual role, including that of a private attorney general. Since it is impossible as a practical matter for the government to seek out and prosecute every important violation of laws designed to protect the public in the aggregate, private actions brought by members of the public in their capacities as investors or competitors, which incidentally benefit the general public interest, perform a vital public service. As the Supreme Court said in *J. I. Case Co.* v. *Borak,* 377 U.S. 426, 432 (1964), private actions provide 'a necessary supplement' to actions by the government and 'the possibility of civil damages or injunctive relief serves as a most effective weapon in the enforcement' of laws designed to protect the public interest."

Gulf & Western Industries, Inc. v. *Great A. & P. Tea Co., Inc.,* 476 F.2d 687, 698-99 (2d Cir. 1973), cited with approval in a Williams Act case by the Third Circuit in *Ronson Corp.* v. *Liquifin Aktiengesellschaft,* 483 F.2d 846, 849 (3d Cir.

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[*] *U. S.* v. *Griesa,* 481 F.2d 276, 286 (2d Cir. 1973).

1973). The point was made again in *Chris-Craft Industries, Inc.* v. *Piper Aircraft Corp.,* 480 F.2d 341, 386-87 (2d Cir.), *cert. den.* 414 U.S. 910, 924 (1973). See *Minnesota Mining and Mfg. Co.* v. *Meter,* 385 F.2d 265, 272 (8th Cir. 1967).

The Court of Appeals in this case took just such a balancing approach in finding "harm" to the public which resulted from Rondeau's failure to meet Williams Act filing requirements and which will result if violations of such requirements, however well-intentioned, are disregarded by the courts.

In none of the cases cited at page 12 of the Petition for the proposition that "irreparable injury has traditionally been a prerequisite to granting an injunction on a private cause of action" was the party seeking injunctive relief "assuming a dual role, including that of a private attorney general." *Gulf & Western Industries, Inc.* v. *Great A. & P. Tea Co., Inc., supra,* 476 F.2d at 699. In *Pa.* v. *Wheeling & Belmont Bridge Co.,* 54 U.S. (13 How.) 518 (1851), Pennsylvania sought to abate as a nuisance a bridge across the Ohio River that stopped some traffic on the river thereby reducing the state's revenue from the operation of connecting canals and railroad lines; in *Beacon Theaters* v. *Westover,* 359 U.S. 500 (1959), the plaintiff wanted to end the threat of impending antitrust lawsuits; in *Cameron* v. *Johnson,* 390 U.S. 611 (1968), the plaintiffs were asserting personal constitutional rights; and in *Locomotive Engineers* v. *M.-K.-T. R. Co.,* 363 U.S. 528 (1960), the union sought to maintain the wages of its members affected by a disputed work-force reduction pending the decision of the National Railroad Adjustment Board. In each of these cases the remedy sought would benefit only the party seeking it.

CONCLUSION

Respondent submits that this case does not meet the standards set by this Court for issuance of a writ of *certiorari.* There are no special and important reasons for review of the Seventh Circuit decision. There has been no viable demonstration that the Seventh Circuit failed to apply established legal principles to the facts of this case. The conflict between circuits suggested by petitioners is an illusion. For the foregoing reasons, respondent respectfully submits that the petition for writ of *certiorari* should be denied.

Respectfully submitted,

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November 11, 1974

APPENDIX

APPENDIX

UNITED STATES COURT OF APPEALS

For The Eighth Circuit

No. 73-1867

Tri-State Motor Transit Co.,
Plaintiff-Appellant,
v.
National City Lines, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Western District of Missouri.

Submitted: March 13, 1974.
Filed: April 4, 1974.

Before Gibson, Bright, and Stephenson, Circuit Judges.

PER CURIAM.

Plaintiff-appellant Tri-State Motor Transit Co. (Tri-State) sought injunctive relief in the Western District of Missouri against the following defendants each of whom allegedly had purchased shares of Tri-State's common stock: National City Lines (National), National City Truck Rental Company (a wholly owned subsidiary), and Bertram B. Beveridge and Walter F. Carey, directors of National.

Count I of the complaint alleged a violation of Section 13(d) of the Securities Exchange Act of 1934, 15 U.S.C. §78m(d) (known as the Williams Act), on the ground that National had failed to file the requisite statement with the Securities and Exchange Commission upon its acquisition of stock resulting in the ownership of more than five percent of Tri-State's stock.

Count II of the complaint alleged a violation of Section 5 of the Interstate Commerce Act, 49 U.S.C. §5(2), on the ground that National had not obtained the requisite consent of the Interstate Commerce Commission before undertaking the acquisition of Tri-State's stock.

Plaintiff moved for summary judgment and defendants moved to dismiss counts I and II pursuant to Fed. R. Civ. P. 12(b)(6). In a memorandum and order filed July 27, 1973, Judge Oliver granted defendants' motion to dismiss count II of the complaint on the ground that the Interstate Commerce Act did not authorize a private right of action for a violation of Section 5. *See B. F. Goodrich Co.* v. *Northwest Industries, Inc.*, 424 F.2d 1349 (3d Cir.), *cert. denied*, 400 U.S. 822 (1970). The remainder of the motion was denied.

Subsequently, an elaborate stipulation of all relevant facts was submitted to the court, and, in a memorandum and order filed October 10, 1973, Judge Oliver granted a motion for summary judgment for defendants as to count I of the complaint on the ground that, since the stipulated facts revealed no "deliberate covert and conspiratorial noncompliance with the requirements of 13(d)," injunctive relief was not warranted. *See Mosinee Paper Corp.* v. *Rondeau*, 354 F. Supp. 686 (W.D. Wis. 1973).

It is axiomatic that the issuance of injunctive relief is committed to the trial court's discretion. We find no abuse of discretion in Judge Oliver's refusing an injunction and granting summary judgment for defendants under count I. We also agree with Judge Oliver's construction of the statute in count II.

Affirmed. *See* Rule 14 of the Rules of this Court.

A true copy.

Attest:

Clerk, U. S. Court of Appeals, Eighth Circuit.

[Not to be printed or published.]

Supreme Court, U. S.
FILED
JAN 30 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-415

FRANCIS A. RONDEAU, *Petitioner*

v.

MOSINEE PAPER CORPORATION, *Respondent.*

On Writ of Certiorari to the
United States Court of Appeals
for the Seventh Circuit

BRIEF FOR PETITIONER

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IN THE

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OCTOBER TERM, 1974

No. 74-415

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MOSINEE PAPER CORPORATION, *Respondent.*

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

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BRIEF FOR PETITIONER

OPINION BELOW

The opinion of the Court of Appeals (App. 161-181) is reported at 500 F.2d 1011.

JURISDICTION

The judgment of the Court of Appeals was entered July 16, 1974 (App. 2). On October 12, 1974, a petition for a writ of certiorari was filed, and was granted on December 16, 1974. The jurisdiction of this Court rests on 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

I. Did the Court of Appeals correctly decide that a showing of irreparable harm was not a prerequisite to granting injunctive relief under section 13(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78m(d)?

II. Did the Court of Appeals correctly decide that an unintentional, non-covert and non-conspiratorial violation of section 13(d) must be "neutralized" to deny the violator the benefit of his wrongdoing by the entry of a decree, after the violation has been corrected by filing a legally sufficient Schedule 13D, enjoining the violator from voting the shares he acquired in the period between the date he should have filed his 13D Schedule and the date it was actually filed?

STATUTE INVOLVED

Section 13(d) of the Securities Exchange Act of 1934 as created by the amendment known as the Williams Act, 82 Stat. 456, codified at 15 U.S.C. § 78m(d) provided as of the dates involved in this case:

> (d)(1) Any person who, after acquiring directly or indirectly the beneficial ownership of any equity security of a class which is registered pursuant to Section 12 of this title, or any equity security of an insurance company which would have been required to be so registered except for the exemption contained in Section 12(g)(2)(G) of this title, or any equity security issued by a closed-end investment company registered under the Investment Company Act of 1940, is directly or indirectly the beneficial owner of more than 5 per centum* of such class shall, within ten days after such acquisition, send to the issuer of the security at its principal executive office, by registered or certified mail, send to each exchange where the security is traded, and file with the Commission, a statement containing such of the following information, and such additional information, as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors—
>
> (A) the background and identity of all persons by whom or on whose behalf the purchases have been or are to be effected;
>
> (B) the source and amount of the funds or other consideration used or to be used in making the purchases, and if any part of the purchase price or proposed purchase price is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, or trading such security, a description of the transaction and the names of the parties thereto, except that where a source of funds is a loan made in the ordinary course of business by a bank, as defined in Section 3(a)(6) of this title, if the person filing such statement so requests, the name of the bank, shall not be made available to the public;
>
> (C) If the purpose of the purchasers or prospective purchases is to acquire control of the business of the issuer of the securities, any plans or proposals which such persons may have to liquidate such issuer, to sell its assets to or merge it with any other persons, or to

---

* Prior to December 31, 1970 this was ten percentum; the amendment was accomplished by Pub. L. 91-567, 84 Stat. 1497.

make any other major change in its business or corporate structure;

(D) the number of shares of such security which are beneficially owned, and the number of shares concerning which there is a right to acquire, directly or indirectly, by (i) such person, and (ii) by each associate of such person, giving the name and address of each such associate; and

(E) information as to any contracts, arrangements or understandings with any person with respect to any securities of the issuer, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guaranties of loans, guaranties against loss or guaranties of profits, division of losses or profits, or the giving or withholding of proxies, naming the persons with whom such contracts, arrangements, or understandings have been entered into, and giving the details thereof.

(d)(2) If any material change occurs in the facts set forth in the statements to the issuer and the exchange, and in the statement filed with the Commission, an amendment shall be transmitted to the issuer and the exchange and shall be filed with the Commissions, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(d)(3) When two or more persons act as a partnership, limited partnership, syndicate, or other group for the purpose of acquiring, holding, or disposing of securities of an issuer, such syndicate

or group shall be deemed a "person" for the purposes of this subsection.

(d)(4) In determining, for purposes of this subsection, any percentage of a class of any security, such class shall be deemed to consist of the amount of the outstanding securities of such class, exclusive of any securities of such class held by or for the account of the issuer or a subsidiary of the issuer.

(d)(5) The Commission, by rule or regulation or by order, may permit any person to file in lieu of the statement required by paragraph (1) of this subsection or the rules and regulations thereunder, a notice stating the name of such person, the number of shares of any equity securities subject to paragraph (1) which are owned by him, the date of their acquisition and such other information as the Commission may specify, if it appears to the Commission that such securities were acquired by such person in the ordinary course of his business and were not acquired for the purpose of and do not have the effect of changing or influencing the control of the issuer nor in connection with or as a participant in any transaction having such purpose or effect.

(d)(6) The provisions of this subsection shall not apply to—

(A) any acquisition or offer to acquire securities made or proposed to be made by means of a registration statement under the Securities Act of 1933;

(B) any acquisition of the beneficial ownership of a security which, together with all other acquisitions by the same person of securities of the same class during the preceding twelve months, does not exceed 2 per centum of that class;

(C) any acquisition of any equity security by the issuer of such security;

(D) any acquisition or proposed acquisition of a security which the Commission, by rules or regulations or by order, shall exempt from the provisions of this subsection as not entered into for the purpose of, and not having the effect of, changing or influencing the control of the issuer or otherwise as not comprehended within the purposes of this subsection.

STATEMENT

On February 13, 1973 the petitioner's (hereafter "Rondeau") motion for summary judgment dismissing respondent's (hereafter "Mosinee") complaint was granted by the District Court. The complaint charged Rondeau with, inter alia, violation of section 13(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78m (d) (App. 9-11). The District Court found that Rondeau had failed to file a timely Schedule 13D but that the error was unintentional and non-conspiratorial, that Mosinee was in no danger of irreparable harm because of the violation, and that Rondeau had subsequently filed a legally sufficient Schedule 13D. On these findings the District Court held no relief was appropriate and dismissed the action. The Court of Appeals for the Seventh Circuit reversed the District Court upon the grounds (1) that no danger of irreparable harm was necessary for injunctive relief under section 13(d); and (2) that violation of section 13(d) in and of itself mandated injunctive relief against the violator regardless of the reasons for the violation. The Circuit Court remanded the case to the District Court with instructions to enter a decree enjoining Rondeau from further violations of section 13(d) and from voting 26,000 shares of Mosinee stock (representing 3% of his holdings and the number of shares he purchased between the due date of the Schedule 13D and the date of its actual filing) with respect to any takeover, proxy contest or election of officers or directors for a period of five years.

The District Court determined that there was no genuine issue of material fact. The Court of Appeals concurred in that conclusion and accepted the District Court's factual findings. Circuit Judge Pell dissented from the Court of Appeals' decision and in his dissenting opinion considered the argument of Mosinee that there were in issue disputes of material fact which precluded the District Court from granting summary judgment. After examining that argument and conceding that the question might be close, Judge Pell concluded that the District Judge intended simply to state the uncontroverted facts and that the summary judgment was proper. What follows is a synopsis of the operative facts found by the District Court.

Mosinee is a Wisconsin corporation located in central Wisconsin, engaged in the manufacture of pulp and paper. Its only class of equity security is common stock which is registered pursuant to section 12 of the Securities Exchange Act (15 U.S.C. § 781). There were 806,177 shares of its stock outstanding on August 31, 1971. During the period when Rondeau was purchasing Mosinee stock, Clarence Scholtens was President of Mosinee and John Forester was its Chairman. Mr. Forester, his wife, and trusts managed by him, were collectively the largest shareholders of Mosinee in 1971. Rondeau has engaged in the cold storage business and other business activities in Mosinee and Wausau, Wisconsin. His association with Mosinee Cold Storage, Inc. and Wausau Cold Storage, Inc. and Wausau Cold Storage Company, Inc. was known to Scholtens and Forester.

In the winter of 1971, Rondeau concluded and openly expressed the opinion that Mosinee stock was underpriced and a good investment. He made his first purchase of Mosinee stock in his own name on April 5, 1971, at $12.50 per share. He continued to purchase Mosinee shares until the last transaction was concluded on August 4, 1971. He placed no further orders for Mosinee shares after July 30, 1971. Rondeau's purchasers of Mosinee shares was open and notorious. The shares were registered in his name or in the names of companies and partnerships with whom he was known to be associated, some of which bore his name.

Very shortly after Rondeau's first purchases of Mosinee shares were registered on the books of Mosinee's stock transfer agent, Mosinee's president, Scholtens, and its chairman, Forester, learned of Rondeau's purchases. His substantial purchases of Mosinee shares was known to brokers and businessmen in the communities of Mosinee and Wausau. When his holdings reached 18,000 shares on Mosinee's records, Mr. Scholtens contacted Mr. Rondeau by telephone to welcome him as a new substantial shareholder. Rondeau stated in that conversation that he felt the stock was underpriced and was a good investment; that he would continue to purchase shares and might acquire up to 40,000 shares, and that he was perfectly happy with the operation. Starting in April and continuing

through July, 1971 both Scholtens and Forester maintained tabulations of the cumulative total of Rondeau's purchases of Mosinee stock.

By May 17, 1971, Rondeau had acquired a total of 40,413 shares of Mosinee stock. At that time, 40,309 shares represented 5% of the outstanding stock of Mosinee. Accordingly, section 13(d) of the Securities Exchange Act of 1934, as amended by the Williams Act (82 Stat. 456, 15 U.S.C., § 78m(d)) and the regulations issued pursuant to it, required Rondeau within ten days (May 27, 1971) to transmit to Mosinee and file with the Securities Exchange Commission a Schedule 13D. The District Court found that Mr. Rondeau did not know that he was required to file a Schedule 13D when his holdings exceeded 5%; that he did not obtain that information until July 30, 1971 when, after receiving a letter from Mr. Forester which in part stated that Rondeau's activity in Mosinee stock may be creating problems under the federal securities laws, Rondeau, for the first time, consulted his attorney. Rondeau had been casually advised in the past that he did not need to file anything with the SEC until his holdings exceeded 10%. That had been the law until December of 1970 when the Securities Exchange Act of 1934 was amended to reduce the filing requirement from 10% to 5%. (App. 142-3) Upon learning that he was required to file a Schedule 13D, Rondeau directed his accountants to work continuously to gather the information required by the Schedule and he placed no further orders for plaintiff's stock. He filed his Schedule 13D on August 25, 1971 and filed an amendment and supplement to the Schedule on September 29, 1971. This action was commenced on September 2, 1971.

Beginning on July 30, 1971 (the same time that he communicated by letter with Rondeau), and continuing for the next four trading days, Mr. Forester, and trusts that he managed, purchased over 20,000 shares of Mosinee stock, which the District Court found was not an unusual volume of transactions for the trusts involved.

The District Court found there was no concrete evidence warranting a finding that Rondeau seriously considered attempting to obtain control of Mosinee prior to the time he conversed with his attorney by telephone after receiving Mr. Forester's letter of July 30, 1971. The Court found that Rondeau and the other defendants named in the District Court action did not engage in any intentional covert or conspiratorial conduct in failing to timely file the Schedule 13D.

The District Court found that Rondeau's purchases of Mosinee stock created some concern on the part of Mosinee management, some of its employees and some of its shareholders with respect to the consequences of a possible tender offer and subsequent change in the control of the company; that this anxiety may have been somewhat worsened by rumors about Mr. Rondeau's intentions which resulted from his failure to articulate his purpose in a timely 13D Schedule. The District Court concluded, however, that there was no evidence in the voluminous record which would support a finding of irreparable harm. (Twenty-three depositions were taken involving over 1,000 pages of transcript. Mosinee thoroughly and completely examined Rondeau and his associates and their records.) The District Court found that Rondeau's Schedule 13D, as amended, was legally sufficient and did not contain misrepresentations of fact.

Mosinee filed a motion for a preliminary injunction but the motion was withdrawn prior to the scheduled hearing (App. 139). Rondeau moved for summary judgment and urged a speedy disposition of the action because the very pendency of this action made it impossible for him to proceed with a tender offer or proxy contest if he should decide so to do. (App. 134). Neither Rondeau nor any other person or firm has engaged in a tender offer for Mosinee's stock since this action was filed in September, 1971. The annual meetings of Mosinee held in the spring of 1972, of 1973 and of 1974 were conducted with no proxy contest; at each of these meetings the management slate of directors was elected without contest.

SUMMARY OF ARGUMENT

Section 13(d) of the Williams Act was designed to inform corporation shareholders of large aggregations of stock by any individual or group. It is essentially a disclosure measure, not meant to favor corporate management desirous of retaining its position. However, section 13(d) has come to be viewed as a weapon by entrenched corporate management against efforts by new shareholders to exert influence on corporate policy. The decision of the Court of Appeals in this case encourages such a view.

The district courts, as triers of fact, must have the means and freedom to fashion a remedy that fits the facts in each case. The Circuit Court decision deprives section 13(d) and the district courts of needed flexibility to deal effectively and fairly with different fact situations. Without regard to the facts, the Circuit Court decision prescribed an inflexible punishment which Congress did not enact. Additionally, in order to reach this judgment, the Circuit Court abolished a traditional prerequisite of injunctive relief: the finding of irreparable harm. In arbitrarily restructuring the elements of injunctive relief and creating a punishment for violation of section 13(d), the Circuit Court overlooked the purpose of the Williams Act and ignored the weight of judicial authority.

ARGUMENT

I. THE WILLIAMS ACT: HISTORY AND JUDICIAL CONSTRUCTION

A. The Williams Act was designed to provide information to stockholders, not as a weapon for management.

The Williams Act was enacted to provide certain specified information to management and shareholders in advance of a tender offer or proxy contest. Section 13(d) does not by its terms provide penalties for its violation or mandate any civil remedy. The federal courts have, therefore, been free to fashion remedies appropriate in each particular case.

The legislative history of the Act (H. Rep. No. 90-1711, 90th Cong., 2d Sess., pp. 2811-2823 (1968)) traces the background and need for such legislation. "It was urged during the hearings that takeover bids should not be discouraged because they serve a useful purpose in providing a check on entrenched but inefficient management. It was also recognized that these bids are made for many other reasons, and do not always reflect a desire to improve the management of the company. The bill avoids tipping the balance of regulation either in favor of management or in favor of the person making the take over bid. It is designed to require full and fair disclosure for the benefit of investors while at the same time providing the offeror and management equal opportunity to fairly present their case." (*Id.* at 2813).

It is most significant that the Act is intended to provide the offeror and management "equal opportunity" to fairly present their case. Given the concern of the Congress against tipping the scales in favor of entrenched management, it is evident that the purpose of the Williams Act would be frustrated, rather than effectuated should Rondeau's stock be sterilized. The type of "equal opportunity" contemplated by Congress will disappear if management is able to invoke a technical violation of the filing requirements of section 13(d) against an individual who acted openly at all times with respect to his purchases, who promptly filed the required schedule upon learning of the requirement, and whose only fault was lack of knowledge of the then recently amended ownership percentage requirements of the Act.

The purpose of the Williams Act has also been clearly articulated by a number of courts. In *Electronic Specialty* v. *International Controls Corp.,* 409 F.2d 937 at 948 (2d Cir. 1969), the court commented: "Congress intended to assure basic honesty and fair dealing, not to impose an unrealistic requirement of laboratory conditions that might make the new statute a potent tool for incumbent management to protect its own interests against the desires and welfare of the stockholders."

A similar view was expressed by the district court in *Nicholson File Co.* v. *H. K. Porter Co.,* 341 F.Supp. 508 (D.R.I. 1972) and the court of appeals in *GAF Corp.* v. *Milstein,* 453 F.2d 709 at 719 (2d Cir. 1971), *cert. denied* 406 U.S. 910 (1972): "The history and language of section 13(d) make it clear that the statute was primarily concerned with disclosure of potential changes in control from new aggregations of stockholdings." See also *Butler Aviation International Inc.* v. *Comprehensive Designers Inc.,* 425 F.2d 842 at 845 (2d Cir. 1970); *Susquehanna Corp.* v. *Pan American Sulphur Co.,* 423 F.2d 1075 at 1085 (5th Cir. 1970).

With the Williams Act, Congress adopted a neutral position between incumbent management and the offeror while giving the shareholder the protection he needed. The Act's disclosure requirements embody the basic principle of federal securities regulation—to prevent investor fraud by educating the shareholder.

B. Section 13(d) although not creating a remedy may be enforced through a private cause of action.

The federal courts have the power to grant appropriate relief in private actions brought to enforce the 1934 Securities Exchange Act.

In respect to laws regulating securities, the Supreme Court in *J. I. Case Co.* v. *Borak,* 377 U.S. 426 at 433 (1964), made it clear that "When a federal statute condemns an act as unlawful, the extent and nature of the legal consequences . . . are . . . federal questions (and) it is for the federal courts to adjust their remedies so as to grant the necessary relief where federally secured rights are invaded." Although the Williams Act and its history are both silent as to a private cause of action, "it seems well settled . . . that courts will in the face of such silence imply remedies . . . ," Note, "Cash Tender Offers," 83 HARVARD LAW REVIEW 377 at 397-8 (1969); and in fact, the courts have had no difficulty in recognizing a private cause of action for violation of the Williams Act, see *Bath Industries* v. *Blot,* 427 F.2d 97 at 113 (7th Cir. 1970), and *GAF* v. *Milstein,* 453 F.2d 709 at 719 (2d Cir. 1971).

C. Section 13(d) has increasingly been used as a weapon by entrenched management.

We have seen that section 13(d) was enacted to provide information to shareholders and that although not explicitly providing a remedy, the statute may be enforced by a judicially created private cause of action. The right of a private remedy has increasingly been used as a weapon by entrenched management in disregard of the statutory purpose. As the Second Circuit recently noted "A familiar defensive tactic increasingly used by target companies to delay or thwart a takeover bid made by a tender offeror has been the institution of a lawsuit against the offeror charging violation of the federal antitrust laws or non-disclosure of material information in violation of the Williams Act," *Corenco Corp.* v. *Schiavone & Sons, Inc.,* 488 F.2d 207 at 210 (2d Cir. 1973).

In bringing these lawsuits, management is not always staunchly protecting its shareholders from predatory raiders. "Management's actions do not always reflect an attempt to protect the shareholders's freedom of decision but rather may reflect a desire to prevent the takeover and preserve its control. Thus, the courts must carefully scrutinize management's claims of illegality and nondisclosure." "The Courts and the Williams Act: Try a Little Tenderness," 48 N.Y.U. L. REV. 991 at 1011 (1973). ". . . District Judges must be vigilant against resort to the courts on trumped-up or trivial grounds as a means for delaying and thereby defeating legitimate tender offers," *Electronic Specialty Co.* v. *International Controls Corp.*, 409 F.2d 937 at 947 (2d Cir. 1969).

The Circuit Court decision in the Rondeau case encourages management's use of section 13(d) as a weapon because the decision mandates imposition of a severe penalty against an offeror—sterilization of his stock's voting rights—regardless of the factual background which led to violation of the statute. In creating this penalty the Circuit ignored the admonition of Congress that the Williams Act was neutral in corporate management struggles, and converted a disclosure and regulatory statute to a penal law. It appears that the Circuit Court concluded that an injunction had to be entered for the reasons that only by the entry of an injunction could the Act be vindicated (viz., if the statute is violated there must be a remedy) and that an injunction would deter future violators. There is no principle of federal jurisprudence that *requires* a penalty for a technical, unknowing violation of a regulatory statute which has been corrected by the violator upon learning of his error. It is neither necessary nor appropriate to enter a harsh punitive order in every case to carry out the purposes of the Williams Act. It may well be, as here, that the Act has been vindicated, that its purposes have been served, before the Court is called upon to enter an injunction or provide any other form of relief. In a very real sense, the threat of a private action by management to enforce the Williams Act, which the courts have properly sanctioned, in itself serves to enforce the Act. Rondeau's technical violation occurred in the period from May 27 to August 25, 1971. This action was filed on September 2, 1971. Mosinee initially moved for a preliminary injunction but then withdrew its motion. As Mr. Rondeau states in his affidavit in support of his motion for summary judgment (App. 134) the very pendency of this action and the concommitant uncertainty of result has made it impossible for him to consider a tender offer for Mosinee stock or a proxy contest. The threat of a civil lawsuit with its attendant expense and delays is probably the strongest regulatory mechanism built into the Williams Act.

There is, we submit, no logic in the argument that to deter future potential violators some injunctive remedy must be constructed for every violation of the Act no matter how technical, especially when the violation has been cured. A person is only deterred if he knows that a proposed course of action will violate a law and that he is likely to be penalized if he proceeds with the action. Obviously, Mr. Rondeau would not have been deterred by the threat of an injunction because he did not know that he was required to file a Schedule 13D and might suffer a penalty if he failed to file. Knowing violations of the Williams Act will almost always be part of a covert, conspiratorial scheme to gain control of a corporation. Those who would engage in such activities will knowingly fail to file a Schedule 13D if they think they can gain tactical advantage before their conduct is enjoined. In those situations some injunctive decree is, of course, appropriate to vindicate the Act. Knowing and knowledgeable violators of the Williams Act are deterred because they will know that intentional violations will be enjoined, especially when such violations are part of a covert scheme to obtain control of a corporation before management and shareholders can react. Such a description does not fit Francis Rondeau.

The disenfranchisement of a portion of Rondeau's Mosinee stock provides no benefit to Mosinee shareholders other than the cold comfort of learning that for every violation of the Williams Act there must be a remedy. Moreover, there is no comparable remedy which deters incumbent management from misuse of the Act. The effect of the Circuit Court decision is to frustrate stockholder democracy by removing as an active participant in the affairs of Mosinee a stockholder of importance who may have ideas to present and may be in a position to improve the management of the corporation if he is free to exercise in full his rights as a stockholder.

This Court has recently held in another area of securities law that it will not impose a harsh penalty for a technical violation of a statute in circumstances where to impose a penalty would not further the legislative policies of the Act. In *Kern County Land Co. v. Occidental Petroleum Corp.*, 411 U.S. 582 (1973), plaintiff proved a technical violation of section 16(b) of the Securities Exchange Act of 1934 (15 U.S.C. § 78p(b)). Nonetheless, no relief was awarded because the violation was found not to have resulted in short-swing profits based on insider information. Section 16(b) was enacted to prevent short term profits for corporate insiders speculating on the basis of secret information. The Court held that where there was no evidence of insider speculation the statute should not apply, even if its language seemed broad enough to include those "statutory insiders" who had no actual secret information. "In deciding whether borderline transactions are within reach of the statute, the courts have come to inquire whether the transaction may serve as a vehicle for the evil which Congress sought to prevent . . . (,) thereby endeavoring to implement congressional objectives without extending the reach of the statute beyond its intended limits," 411 U.S. 494-5.

II. RELIEF IN A SECTION 13(d) ACTION SHOULD BE FLEXIBLE AND APPROPRIATE TO THE PURPOSE OF THE ACT; IN THE ABSENCE OF IRREPARABLE HARM INJUNCTIVE RELIEF IS INAPPROPRIATE.

A. The materiality of the violation and passage of time after the violation is cured are relevant considerations in determining the form of an appropriate judgment.

Because district courts have the power to grant virtually any relief that is appropriate in a Williams Act case, they have the corresponding responsibility to see that shareholders and management are timely and honestly informed, but that the "balance is not tipped" to protect management from legitimate shareholder action designed to alter management. Rational exercise of this power requires thoughtful consideration of the clearly stated policy of the Act in the differing factual setting of each case. Courts must bear in mind that the real object of the Act is the proper exercise of shareholder democracy, not the protection of management.

For the most part, courts in fashioning remedies in Williams Act cases have demonstrated desirable flexibility and have fashioned appropriate relief. Five forms of relief have been considered: recision, divestiture of shares, damages, limitation of voting rights (sterilization of stock), and injunctive relief delaying takeover bids. See Young, "Judicial Enforcement of the Williams Amendments: The Need to Separate The Questions Of Violation and Relief," 27 BUSINESS LAWYER 391 at 402-405 (1972). An overriding concern of the courts has been to tailor relief to fit the nature of a particular violation without transgressing the bounds of equity by meting out punishment. See *Committee For New Man. of Butler Aviation* v. *Widmark,* 335 F.Supp. 146 at 155 (E.D.N.Y. 1971). A review of Williams Act cases shows the courts have generally insisted that violations be cured, but have imposed no further permanent or punitive penalty.

In *Butler Aviation International Inc.* v. *Comprehensive Designers Inc.,* 425 F.2d 842 (2d Cir. 1970), the court affirmed the preliminary enjoining of an offeror in violation of the Williams Act but provided that the offer might go forward after full disclosure. In *Ronson Corp.* v. *Liquifin Aktiengesellschaft,* 370 F.Supp. 597 (D.N.J.), *aff'd* 497 F.2d (3rd Cir. 1974), the court recognized that an offeror may amend its schedules to cure defects, may rely on the amendments to satisfy the statute, and may be entitled to dissolution of a temporary injunction against an offer after the curative amendments are made. In *Corenco Corp.* v. *Schiavone & Sons, Inc.,* 488 F.2d 207 at 210 (2d Cir. 1973) the court affirmed the trial court's decision to permit the tender offer to proceed after filing and distribution of curative amendments. In *Sonesta International Hotels Corp.* v. *Wellington Associates,* 483 F.2d 247 (2d Cir. 1973) the court ordered a preliminary injunction against an offer until certain curative disclosures were made. In *Texasgulf Inc.* v. *Canada Development Corp.,* 366 F.Supp. 374 (S.D. Tex. 1973), the court permitted the tender offer to proceed so long as the offeror's 13(d) violation was cured and shareholders who had already tendered prior to the curative amendments were permitted to withdraw.

In *Bath Industries, Inc.* v. *Blot,* 427 F.2d 97 at 113 (7th Cir. 1970), the Seventh Circuit itself affirmed a trial court order enjoining a takeover bid, which order was to be effective only until it was determined that the parties enjoined had complied with section 13(d).

In *Chris-Craft Industries* v. *Piper Aircraft Corp.,* 480 F.2d 341 (2d Cir.), *cert. denied* 414 U.S. 910, 414 U.S. 924 (1973), the court did impose a five year ban against voting the stock which was acquired during a Williams Act violation. But the facts in *Chris-Craft* were entirely different from those in this case. An analysis of *Chris-Craft* supports and illustrates the argument presented here: that remedies must be framed to fit the differing facts of each case. Chris-Craft Industries was awarded damages for misstatements, judged to be in violation of section 14(e) of the Williams Act and S.E.C. Rule 10b-6 by the management of Piper Aircraft, Bangor Punta Corp., and other defendants. After a wide ranging battle for corporate control of Piper Aircraft, Chris-Craft lost its takeover bid. That a violator of the Securities Exchange Act should be allowed to retain the benefit (i.e. control the acquired corporation) of its misdeed (misleading registration statements) was deemed inequitable and in contravention of the purpose of the laws involved. Therefore, Bangor Punta besides being found liable to Chris-Craft for the latter's monetary loss in the takeover bid, was "denied the fruits of obtaining Piper shares illegally."

The instant case is factually dissimilar to *Chris-Craft* because Rondeau does not have anything like the "fruits" enjoyed by Bangor Punta. Rondeau does not control Mosinee (indeed there has never been a tender offer or proxy battle). Rondeau's violation was not a calculated act committed in a heated struggle for corporate control. Mosinee could make no showing that any party was substantially (much less irreparably) harmed by the late filing of Rondeau's Schedule 13D. Granting equitable relief in *Chris-Craft* vindicated the purpose of the Securities Exchange Act of 1934 by punishing a party which, through a misleading registration statement, had actually won control of a target corporation and in doing so had prevented open and fair exercise of stockholder democracy. However, similarly harsh relief in the Rondeau case would impede stockholder democracy because the threat of such retaliation for even innocent, noninjurious violations will discourage potential challengers from entering the market. The differences between *Chris-Craft* and *Rondeau* are clear when we compare the potential harm and resulting need for equitable relief in the context of an actual battle for corporate control as contrasted with a simple late Schedule 13D filing followed by complete compliance for more than three years.

The point to be made is that the courts must be free to heed the admonishment of that exalted authority whose "object all sublime" was to "let the punishment fit the crime." See *Electronic Specialty Co.* v. *International Controls Corp.*, 409 F.2d 937 at 947 (2d Cir. 1969). If district courts are to fashion appropriate forms of relief in Williams Act cases they should not be bound to enter an injunction for every violation of the Williams Act no matter how technical, insubstantial or moot. District courts should be free to dismiss Williams Act cases where the purpose of the Act has been vindicated by the filing of

a legally sufficient Schedule 13D and the passage of time, and when no harm has resulted which requires further relief.

If the opinion of the Seventh Circuit in this case, with its apparent hostility to potential offerors and proxy solicitors, becomes the law in Williams Act cases, tender offers and proxy contests are likely to be inhibited and the Williams Act will become even more a potent tool to protect incumbent management. The fundamental error of the Seventh Circuit is its misreading of the statutory purpose of the Act. It has concluded the Act requires some punitive remedy for every violation. The Seventh Circuit fails to recognize that the Act may be vindicated by a late but legally sufficient filing of a Schedule 13D together with the passage of time which may result from the filing of an action by incumbent management. The Seventh Circuit has overlooked the fact that the simple filing of a Williams Act case without regard to the merits of the action or the materiality of the violation upon which the action is based may achieve the purposes of assuring that a legally sufficient schedule has been filed and that shareholders and management have adequate time to respond to it.

If the inflexible approach of the Seventh Circuit is set aside, district courts should have no difficulty in fashioning flexible remedies appropriate in each case. Where the violation of the Act appears to be deliberate, covert, and perhaps conspiratorial, and for the purpose of achieving some strategic advantage in a tender offer or proxy contest, injunctive relief and even, perhaps, temporary sterilization of improperly acquired stock may be appropriate. In circumstances where the deliberateness of the violation is in question but a legally sufficient Schedule 13D is ultimately filed, some form of temporary relief may be appropriate to permit management and shareholders to respond to the takeover bid. Where it can be shown the Schedule 13D that was filed contains a material omission or is deliberately misleading, obviously some form of relief requiring the defendant to file a correct and legally sufficient Schedule 13D is appropriate. Where, as here, it is determined that the violation was not deliberate or covert, where the violation has been cured by filing of a legally sufficient Schedule 13D, where there has been no takeover attempt, and where management and shareholders have had an adequate opportunity to respond to the information disclosed in the Schedule 13D, the Act has been vindicated and the most appropriate remedy is dismissal of the action. "The Williams Amendments: An Evaluation of the Early Returns," 23 VAND. L. Rev. 700 at 727 (1970). The distinction between the case which calls for drastic relief and that which requires little or no relief will frequently turn on the materiality of the information not disclosed or disclosed in a misleading manner and the time of filing a legally sufficient schedule in the context of the takeover bid.

In this case, the District Court found that Rondeau's violation was technical, unintentional, and caused no harm to the shareholders of Mosinee. Judge Doyle concluded that because there was no material intentional violation and no legally recognizable harm, no injunctive or other relief against Rondeau was appropriate, particularly in view of the passage of time. The Court of Appeals did not reject the factual findings of the District Court but rather wrote into section 13(d) the requirement that for every violation there

must be a punishment, and directed the harsh punishment of partial disenfranchisement. Thus, for the Seventh Circuit at least, the Court of Appeals has impaired the essential element in fashioning appropriate judgments in Williams Act cases—flexibility.

B. Injunction is a remedy available under Section 13(d) but the elements for injunctive relief must be shown: irreparable harm is necessary unless different grounds are created by statute.

In framing relief under section 13(d) the courts have often had recourse to some form of injunctive relief. The injunction is a valuable and flexible remedy available preliminary to maintain the status quo, or by way of permanent remedy, as in *Chris-Craft* v. *Piper Aircraft,* 480 F.2d 341 (2d Cir. 1973). But although it is a flexible tool, it is not without standards for its use. And among those standards has been the requisite finding of irreparable harm, *American Federation of Labor* v. *Watson,* 327 U.S. 582 at 593 (1946) unless a different threshold, is prescribed by the legislature, *Walling* v. *Builders' Veneer & Woodwork Co.,* 45 F.Supp. 808 (E.D. Wis. 1942); see also, 14A Cyclopedia of Federal Procedure (3rd Ed.) § 73.12[*] The following Williams Act cases have recognized the necessity of finding irreparable harm in determining if an injunction should be granted: *Cattlemen's Investment Co.* v. *Fears,* 343 F.Supp. 1248 at 1253 (W.D. Ok. 1972); *Ozark Air Lines* v. *Cox,* 326 F.Supp. 1113 at 1119 (E.D. Mo. 1971); *Gulf & Western Industries Inc.* v. *Great A & P Tea Co., Inc.,* 476 F.2d 687 at 692 (2d Cir. 1973); *Sonesta International Hotels Corp.* v. *Wellington Associates,* 483 F.2d 247 at 250 (2d Cir. 1973); *Columbia Ribbon and Carbon Mfg. Co. Inc.* v. *Kapralos,* 374 F.Supp. 500 at 501 (E.D.N.Y. 1974).

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[*] Irreparable harm as a necessary precondition for injunctive relief is recognized throughout federal jurisprudence: *Beacon Theatres* v. *Westover,* 359 U.S. 500 (1959) (antitrust law); *Pennsylvania* v. *Wheeling & Belmont Bridge Co.,* 54 U.S. (13 How.) 518 (1851) (abating a nuisance); *Cameron* v. *Johnson,* 390 U.S. 611 (1968) (civil rights); *Locomotive Engineers* v. *M.-K.-T. R. Co.,* 363 U.S. 528 (1960) (labor law); *Embassy Dairy* v. *Camalier,* 211 F.2d 41 (D.C. Cir. 1954) (standard for preliminary injunction in milk inspection case); *Sellers* v. *Regents of University of California,* 432 F.2d 493 (9th Cir. 1970), cert. den. 401 U.S. 981 (1971) (student rights); *Reed Enterprises* v. *Corcoran,* 354 F.2d 519 (D.C. Cir. 1965) (obscenity law).

The need to forestall irreparable injury cuts close to the heart of what injunctive relief is all about. Injunctive relief should be exercised only when intervention is essential to protect property or other rights against irreparable harm. "The very function of an injunction is to furnish preventive relief against irreparable mischief or injury and the remedy will not be awarded where it appears to the satisfaction of the court that the injury complained of is not of such character." 42 Am.Jur.2d *Injunctions* § 48, pp. 787-88; see also 42 C.J.S. *Injunctions* § 23. From a historical perspective, there would be no equitable injunction if it were not dependent on a finding of irreparable harm, see Fiss, *Injunctions,* pp. 9-29 (Foundation Press, 1972).

In overlooking historical development and precedent, the Court of Appeals set forth almost no explanation for its novel holding that irreparable harm is not necess[illegible] for injunctive relief under section 13 (d). The majority opinion concludes that a Williams Act plaintiff need not show irreparable harm in order to obtain permanent injunctive relief "in view of the fact that (Mosinee) as issuer of the securities is in

the best position to assure that the filing requirements of the Williams Act are being timely and fully complied with and to obtain speedy and forceful remedial action when necessary." The supporting explanation speaks to two points: 1. the question of whether Mosinee has standing to sue to enjoin Williams Act violations by its shareholders; 2. the question of whether private enforcement of the Williams Act by management is appropriate. The explanation does not meet the question of whether injunctive relief is appropriate where management cannot show that it has suffered legally recognizable harm, much less irreparable harm.

The majority opinion does state that to the extent Rondeau's schedule was filed late, Mosinee was harmed because it did not timely receive the relevant information surrounding Rondeau's potential to effect control and was delayed in its efforts to make any necessary response to that potential. This broad conclusion is not supported in the record or in the findings of Judge Doyle. In fact, in 1971 the management of Mosinee was informed of Rondeau's purchases of Mosinee stock before his schedule was filed and Forester's very substantial purchases of Mosinee stock may have been in response to Rondeau. When Rondeau's schedule was filed, Mosinee's management had adequate opportunity to respond and call to the attention of Mosinee shareholders the information contained in Rondeau's Schedule 13D. Surely, by the time the motion for summary judgment was filed some months after Rondeau's schedule was filed and this action was commenced, management had had more than adequate opportunity to make whatever response it felt was appropriate to "Rondeau's potential." But more importantly, at the time that the Court of Appeals instructed the District Court to sterilize part of Rondeau's Mosinee stock through the entry of an injunction, a year and one-half had passed since Rondeau's Schedule 13D had been filed, and during that period no proxy contest or tender offer had taken place and there could be no doubt that Mosinee management had had an adequate opportunity to "respond to (Rondeau's) potential" to effect control of the company. It is no wonder that the majority opinion was obliged to conclude that Mosinee need not show irreparable harm as a prerequisite to obtaining injunctive relief.

The Seventh Circuit Court of Appeals makes no real effort to explain its retreat from support of the irreparable harm requirement as stated in *Bath Industries* v. *Blot,* 427 F.2d 97 at 113 (7th Cir. 1970). As Judge Pell argues persuasively in dissent: "We start with the cardinal principal that 'the basis of injunctive relief in the federal courts has always been irreparable harm and inadequacy of legal remedies.' *Beacon Theatres* v. *Westover,* 359 U.S. 500 at 506-7. I am unaware of any reason for lowering the standards in the use of the injunction and agree with Judge Doyle's observation of what the law is in this respect: 'Although one court has stated in dicta that the absence of irreparable harm does not necessarily preclude injunctive relief where the public interest is involved. . . . ,' *Sisak* v. *Wings & Wheels Express, Inc.,* 1971 CCH Fed. Sec. L. Rep. ¶ 92,991 at 90,670 (S.D.N.Y. 1970), other courts have expressly stated that a finding of irreparable harm is a prerequisite to injunctive relief," (App. 173). To this we would add that even in *Sisak* plaintiffs could make no case for injunctive relief, and none was granted.

CONCLUSION

Petitioner Rondeau's mistake was in failing to file a timely Schedule 13D. The violation of section 13(d) has long been cured. The District Court, after examination of the facts, concluded no relief was warranted and that no injury was threatened or achieved. In reversing the District Court, the Circuit Court judicially created an automatically imposed penalty for the statute, which Congress did not intend. Additionally, the Circuit Court, upsetting the traditional practice of equity courts, ordered an injunction without a showing of irreparable harm. Reversal of the Seventh Circuit decision will restore the Williams Act to the neutral posture Congress intended, safeguard the elements of injunctive relief as that body of law has been defined by experience, and do justice to Rondeau. For these reasons, it is respectfully submitted that the judgment of the Court below should be reversed and the District Court's judgment of dismissal should be reinstated.

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IN THE

Supreme Court of the United States

October Term, 1974

No. 74-415

FRANCIS A. RONDEAU,

Petitioner,

vs.

MOSINEE PAPER CORPORATION,

Respondent.

On Writ of Certiorari to the
United States Court of Appeals
for the Seventh Circuit

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IN THE

Supreme Court of the United States

October Term, 1974

No. 74-415

FRANCIS A. RONDEAU,
Petitioner,
vs.
MOSINEE PAPER CORPORATION,
Respondent.

On Writ of Certiorari to the
United States Court of Appeals
for the Seventh Circuit

BRIEF FOR RESPONDENT

QUESTIONS PRESENTED

1. Did the court of appeals err in determining that some equitable relief was appropriate for a conceded failure timely to file a Schedule 13D where the persons who acquired 5 percent without filing continued for nearly three months to buy additional shares?

2. Where there was a conceded failure timely to file a Schedule 13D and the persons who acquired 5 percent without filing continued for nearly three months to buy additional shares, did the court of appeals err in instructing the district court to enter a decree enjoining (a) further violations of the Act, and (b)

voting of the shares acquired in violation of the Act for a period of five years?

3. Where there was a conceded failure timely to file a Schedule 13D and the persons who acquired 5 percent without filing continued for nearly three months to buy additional shares, did the court of appeals err by reversing a summary judgment in favor of those persons on the basis of "findings of fact" as to their knowledge of the law, states of mind and motives, where conflicting inferences concerning those matters could be drawn from affidavits, deposition testimony and documents submitted on the motion?

COUNTERSTATEMENT OF THE CASE

For his statement of the case, petitioner (hereinafter "Rondeau") has related "a synopsis of the operative facts found by the District Court." (Br. Pet. 7). The district court's "findings", improper on a motion for summary judgment,[1] do not fairly state the case. From facts permitting conflicting inferences to be drawn, the district court drew all inferences and resolved all questions

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[1] "Findings of fact" are not only unnecessary on decisions of motions under Rule 56 (Rule 52(a), last sentence), but are ". . . ill advised since [they] would carry an unwarranted implication that a fact question was presented." *General Teamsters, Chauffeurs & Helpers Union v. Blue Cab Co.,* 353 F. 2d 687, 689 (7th Cir. 1965), citing *A R Inc. v. Electro-Voice, Inc.,* 311 F. 2d 508, 513 (7th Cir. 1962); *United States v. Mills,* 372 F. 2d 693, 696 (10th Cir. 1966). *See Trowler v. Phillips,* 260 F. 2d 924, 926 (9th Cir. 1958). In this case Judge Doyle's findings comprised a seven-page fact portion of his Opinion and Order, and additional findings are scattered throughout an "opinion" portion. The scope of review is unlimited as to these "findings" made without a trial, *see United States v. U.S. Gypsum Co.,* 333 U.S. 364, 394-395 (1948), which should be regarded as "subordinate conclusions of law." *Silverstein v. United States,* 419 F. 2d 999, 1001 (n. 3) (7th Cir. 1969), *cert. denied,* 397 U.S. 1041 (1970).

of credibility in Rondeau's favor. On remanding for entry of injunctive relief, the court of appeals perceived the case not solely in the perspective of the district court, but rather, in the broader context of documentary evidence, deposition testimony and affidavits from which reasonably drawn inferences conflict sharply with the district court's premature "findings". To assure awareness of that broader perspective, respondent (hereinafter "Mosinee") states the case as follows:

Rondeau — described in his district court brief as a "successful and knowledgeable businessman" whose "business activities include . . . banking and a variety of investments. . ."[2] — made his first purchase of Mosinee stock (500 shares) on April 5, 1971. By May 17, 1971 he had acquired 40,413 shares — some in his own name, some in the names of his controlled corporations and other entities.[3] That number of shares constituted more than 5 percent of Mosinee's common stock outstanding. Within ten days thereafter, by May 27, Rondeau was required by law to file with the Securities and Exchange Commission and mail to Mosinee a Schedule 13D comprehensively disclosing his identity, the identities of his associates, their backgrounds, holdings, financing and purposes in acquiring the stock. He did not file. Rather, he continued to buy an additional 26,268 shares through August 4 (A. 48-52), before he filed on August 25.

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[2] Brief in Support of Defendants' Motion for Summary Judgment, Appeal Doc. No. 15, pp. 4, 8.

[3] The entities were: Wausau Cold Storage Company, Inc., Mosinee Cold Storage, Inc.; Francis Rondeau, Inc.; Rondeau Foundation; Rondeau & Company; Ronco; Emjay Corporation Master Profit Sharing Plan dated October 14, 1968. (Answer ¶13, A. 35). There is no evidence that any representative of Mosinee knew of Rondeau's affiliation with these entities at the time he acquired more than 5%, nor that Mosinee shareholders who were selling to Rondeau ever had such knowledge until he finally filed on August 25, 1971.

Rondeau contends that he did not "seriously consider" attempting to gain effective control of Mosinee until August 9, when, having been warned by Mosinee's management that he might have a securities law problem, he talked to his lawyer. But Rondeau's own statements make that seem doubtful.

In the Schedule 13D he filed August 25, Rondeau equivocated:

> "Item 4. *Purpose of Transaction.*
>
> "Francis A. Rondeau determined during early part of 1971 that the common stock of the Issuer was undervalued in the over-the-counter market and represented a good investment vehicle for future income and appreciation. Francis A. Rondeau and his associates presently propose to seek to acquire additional common stock of the Issuer in order to obtain effective control of the Issuer, but such investments as originally determined *were* and are *not necessarily made with this objective in mind.*" (A. 194) (Emphasis supplied).[4]

A deposition question put to Rondeau was:

> "Subsequent to the time that you started acquiring Mosinee Paper Corporation stock in April of 1971, when did you start discussing generally with people the possible invitation for tender offers?" (Rondeau Dep., Appeal Doc. No. 23, p. 83).

Rondeau answered (*id.*, pp. 84-85):

> "A. I specifically discussed this with Ray Heckman on and about the date of the first purchase of Mosinee stock, and shortly before that, and my next discussions were with Piper & Jaffrey & Hopwood asking them for whatever information in blurb sheets and what else was out, stuff that the mill had had done in the way of public relations that were spread around the country by Piper Jaffrey. A man by the name of Riordan wrote this up, which I thought was a public relations form, which was somewhat identical to the one that they had done on Wausau Paper Mills, and I also discussed this specifically with Ed Seim of Baird & Company, and the general conclusion was that this is an underpriced stock.
>
> "Q. Your discussion at that time was about possible tender offers, is that correct?
>
> "A. Just the purchase of these shares, and I had no intention at that time of acquiring effective control of that company.
>
> "MR. BECKWITH: Can we have an adjournment for a few minutes while I stretch my legs.
>
> "MR. HAMMOND: All right.
> (short recess taken.)"

It is difficult to believe that motivations like those reflected in the following account of Rondeau's statements arose suddenly, on or about August 9:

> "He intends to obtain control partly through his purchase of additional stock and either through locking in proxies through the formation of certain voting trusts which would include some 20,000 odd shares owned by Maggie Dessert, formerly of this bank, or through friends in the Wausau/Mosinee area including the Schutte's of Wausau Homes. His purpose in attempting to gain control of Mosinee Paper is to break what he describes as a strangle

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[4] This artful but most equivocal statement has stood, unamended, for nearly three and one-half years. If it has stood the test of time so well as to reflect Rondeau's current state of mind, it is a marvel of sophistication by a businessman supposedly unsophisticated in the intricacies of contesting corporate control. If not, it should be amended.

> hold which John Forester has on the company and the Wisconsin River Valley."[5]

There are other indications of an earlier gestation of an intent to seek control.

When he placed an order for 15,000 shares early in April 1971, Rondeau thought "something was wrong with management." (Rondeau Dep., Appeal Doc. No. 24, pp. 147, 152). He thought earnings were not what they should have been, and that sales could be improved by eliminating "archaic" distribution methods (*id.,* pp. 152, 232-233). He believed that Mosinee President Scholtens was "stifled and, sometimes, even strangled" — apparently by Board Chairman Forester. (*Id.,* p. 168). When asked in April whether he thought he could accomplish the changes in management he considered necessary, Rondeau answered, "Somebody was going to have to try." He thought he could "help" bring about changes in management by changing the board of directors. (*Id.,* pp. 147-148).

In late May or early June, Rondeau told Scholtens that he intended to acquire up to 40,000 shares (just less than 5 percent and approximately the maximum amount that Rondeau could acquire without being required to file a Schedule 13D), and implied confidence in management.[6] (Scholtens Dep., Appeal Doc. No. 34, pp. 16, 17). Actually, he had already acquired more than 5 percent, and had serious questions about management. (Dessert Dep. Appeal Doc. No. 39, pp. 8, 16; Rondeau Dep., Appeal Doc. No. 24, p. 220).

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[5] (A. 129); Memorandum dated September 2, 1971 by Jon C. Bruss, Assistant Vice-President and Commercial Loan Officer, Marine National Exchange Bank, Milwaukee, of conversations with Rondeau September 1 and 2, 1971.

[6] Although Rondeau and his associates actually acquired beneficial ownership of more than 40,000 shares on May 17, Mosinee transfer sheets did not disclose that fact until July 9. (A. 41-42, 51).

One of the people Rondeau thought would go along with him was Margaret Dessert (Heckman Dep., Appeal Doc. No. 27, p. 25), a stockholder of Mosinee who controls more than 20,000 shares and with whom Rondeau had frequent contact. On several occasions Rondeau told her not to sell. (Dessert Dep., Appeal Doc. No. 39, p. 11). Rondeau talked to her in June about putting shares in a voting trust more effectively to control management. (*Id.,* pp. 15-16).[7] John Altenburg, another Rondeau supporter (Heckman Dep., Appeal Doc. No. 27, p. 25) who controlled about 16,000 shares (Altenburg Dep., Appeal Doc. No. 44, p. 6), was present at that discussion (Dessert Dep., Appeal Doc. No. 39, p. 16). At that time (June, 1971) Rondeau, Altenburg and Dessert were unhappy with Mosinee management. (*Id.,* pp. 8, 16; Rondeau Dep., Appeal Doc. No. 24, p. 220).

Brokers with whom Rondeau dealt testified that Rondeau might have discussed the subject of obtaining control with them in July. (Heckman Dep., Appeal Doc. No. 27, p. 23; Jeub Dep., Appeal Doc. No. 29, p. 16; Seim Dep., Appeal Doc. No. 26, p. 28). According to Heckman, Rondeau on *July 30 or 31* (Heckman Dep., Appeal Doc. No. 27, p. 23, lines 14-15) talked about a *tender offer* (*id.,* p. 22); about acquiring 51% (*id.,* p. 23); about financing a tender offer by selling securities and borrowing from the First Wisconsin National Bank (*id.,* pp. 23-24); and about certain stockholders who felt the same way he did and who would go along with him (*id.,* pp. 24-25).[8]

Instead of filing a Schedule 13D as required by May 27, Rondeau continued to buy Mosinee stock from investors who did not know what they might have known had a Schedule 13D been filed: that Rondeau was buying heavily, contemplated a contest for control of Mosinee, and was considering a public cash tender offer for the stock as well as soliciting support. After May 27, Rondeau bought 16,384 shares of Mosinee stock at relatively low and stable prices (A. 48-50) from investors who might well have refused to sell the stock or demanded a higher price had they known what Rondeau had in mind or even the facts that he had acquired more than 5 percent and intended to buy more shares. If that information had been disclosed on May 27, Rondeau might have found the stock unavailable, or its price excessive.[9]

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[7] See note 5, above, and appended text.

[8] See note 5, above, and appended text.

Although warned by Mosinee management on July 30 that he might be violating the federal securities laws (A. 53), Rondeau continued buying Mosinee stock through August 4. By that time he had acquired 66,577 shares, aggregating approximately 8 percent of Mosinee's outstanding stock. Not until August 25 was a Schedule 13D filed at all. Mosinee management was "completely surprised" by the disclosure that Rondeau was considering a cash tender offer. (Scholtens Dep., Appeal Doc. No. 34, p. 26). Not until September 29 was a Schedule 13D filed which purported accurately to describe Rondeau's financing and allocate the securities purchased to the persons in whose names they had been registered.

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[9] Activity such as Rondeau so tardily disclosed — or even the possibility of such activity — tends to increase the market price of the stock. After Rondeau finally filed a Schedule 13D on August 25, 1971 and the filing became public knowledge, the price of Mosinee's stock in the over-the-counter market spurted from 13 to quotes as high as 19-21. (A. 46).

SUMMARY OF ARGUMENT

The decree that the court of appeals ordered the district court to enter — enjoining further violations of the Williams Act and "neutralizing" the violation by barring Rondeau and his associates from voting the shares acquired without disclosure — struck an appropriate balance between divestiture and absolution. In a case where the late filing of a Schedule 13D is clearly "intentional covert, and conspiratorial"* the only appropriate remedy would be divestiture. Short of that, in a case where there may be doubt as to the intent of the persons who acquired shares without disclosing the information required by section 13(d), limitations on voting the stock acquired without disclosure are appropriate.

Several purposes are served by such a decree. First, even such limited relief deters violation of the Williams Act (and analogous provisions of the federal securities laws) by judicial signal that failures to file will not be ignored and cannot be "cured" — exonerating the late filer from any liability — by filing only when the violation is discovered.

Second, the injunction ordered by the court of appeals will fulfill the reasonable expectations of uninformed investors who purchased Mosinee common stock between May 27 and August 25, 1971. In ignorance of the facts a Schedule 13D would have disclosed, they believed they were buying into a company whose stock and management were stable. Instead, there existed an impending tender offer or proxy fight, and a management occupied for an extended period of time in litigating a violation of the federal securities laws. Those investors deserve a measure of stability.

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* Court of Appeals decision, 500 F. 2d at 1017; A. 169.

Third, the decree tells issuers faced with undisclosed acquisitions of their stock that suits brought to enforce the law are not in vain. The violator cannot escape merely by filing late.

The most sensible way to accomplish these ends is, in some degree, to deny the wrongdoer the fruit of his violation. In this case the court of appeals exercised appropriate judgment in reaching that objective.

Irrespective of the terms of the decree it fashioned, the court of appeals was clearly correct in reversing a summary judgment based on "facts" improperly "found" on a motion for summary judgment. Knowledge of the law, intent and purpose, where sharply conflicting inferences may reasonably be drawn from deposition testimony, affidavits and documents, can only be ascertained upon trial. Summary judgment was clearly inappropriate in these circumstances, and if this Court disagrees with the court of appeals' disposition of the case, remand for trial is essential.

ARGUMENT

I. INJUNCTIVE RELIEF OF THE KIND THAT THE COURT OF APPEALS IN THIS CASE CONSIDERED APPROPRIATE MUST BE AVAILABLE TO PRIVATE ENFORCERS OF THE WILLIAMS ACT REGARDLESS OF THE STATE OF MIND OF THE VIOLATOR IF PRIVATE ENFORCEMENT IS TO BE EFFICACIOUS.

A. If belatedly filing a Schedule 13D precludes injunctive relief for the violation, the incentive to file on time (and concomitant protection of stockholders and prospective stockholders) is drastically reduced.

The Williams Act remedied "[t]he failure to provide adequate disclosure to investors in connection with a

cash takeover bid or other acquisitions which may cause a shift in control. . . ." H. R. Rep. No. 1711, 90th Cong., 2d Sess. (1968); 1968 U.S. Code Cong. & Admin. News, p. 2812.

It was created ". . . to close a gap in the disclosure requirements of existing securities laws by requiring full disclosure by persons or groups who 'purchase by direct acquisition or by tender offers * * * substantial blocks of the securities of publicly held companies.'" *Bath Industries, Inc. v. Blot,* 427 F. 2d 97, 102 (7th Cir. 1970).[10]

Section 13(d) of the Securities Exchange Act of 1934 (the "Exchange Act"), created by the Williams Act in 1968, provides the mechanism for such disclosure:

> "[t]he purpose of section 13(d) is to require disclosure of information by persons who have acquired a substantial interest, or increased their interest in the equity securities of a company by a substantial amount, within a relatively short period of time." S. Rep. No. 550, 90th Cong., 1st Sess. (1967); H. R. Rep. No. 1711, 90th Cong., 2d Sess. (1968); 1968 U.S. Code Cong. & Admin. News, p. 2818.

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[10] Senator Williams stated the purpose of his bill as being "to require the disclosure of pertinent information * * * when a person or group of persons seek to acquire a substantial block of equity securities of a corporation by a cash tender offer or through the open market or privately negotiated purchases * * *." 113 Cong. Rec. 24664 (1967). In the Senate hearings on the Williams Act, Senator Kuchel stated:

> "The stockholders have a right to know who they are dealing with, what commitments have been made, and the intention and plans of the offeror. Our securities market must be founded not on those whom [Thomas] Jefferson termed 'gambling scoundrels' who operate in 'great mystery' but on those shareholders who make informed decisions based on disclosure of pertinent facts." *In re The Susquehanna Corp.,* SEC File No. 3-1868, August 5, 1969; ['69-'70 Decisions] CCH Fed. Sec. L. Rep. ¶77,741, at 83,697.

Under section 13(d), as amended, persons acquiring beneficial ownership of more than 5 percent of a class of equity security registered pursuant to Section 12 of the Exchange Act must within ten days file with the SEC and mail to the issuer (and each exchange where the security is traded) a statement containing the detailed information prescribed by Schedule 13D.[11] Required is comprehensive disclosure of their identities, backgrounds, financing, purposes, holdings and recent transactions in the security. Without such disclosure, "investors cannot assess the *potential* for changes in corporate control and adequately evaluate the company's worth." *GAF Corp. v. Milstein,* 453 F. 2d 709, 717 (2d Cir. 1971), *cert. denied,* 406 U.S. 910 (1972) (emphasis supplied). By enacting section 13(d), Congress has deemed the information required to be disclosed thereunder to be "material", i.e., "information . . . as to which an average prudent investor ought reasonably to be informed before buying or selling the security. . . ." 17 C.F.R. §240.12b-2(j). An investor holding a security that is the object of a 5 percent holder's plans to buy additional shares might prefer to hold or demand a higher price if he knew of those plans. A prospective purchaser might be dissuaded or encouraged by such disclosure. After the investor buys, sells or holds in ignorance, it is too late; the purpose of requiring disclosure has been defeated by the late filing. A late filing, whether intentionally late or not, does not remedy the wrong.

It is undisputed that by May 17, 1971, Rondeau had purchased over 5 percent of Mosinee's stock and was required to make the mandatory disclosures within ten days thereafter. But he did not. Instead, for a period of 69 days, from May 27 to August 4, 1971, Rondeau, and six corporations and a partnership which he controlled, bought an additional 16,384 shares of Mosinee stock at relatively low and stable prices from shareholders who might well have refused to sell their stock or demanded a higher price had they known of Rondeau's purchases or considerations (however "serious") to obtain effective control of Mosinee.[12] There is also a substantial probability that the decisions of investors who bought or held Mosinee shares during the delinquency period would have been affected by the information required to have been disclosed. The market Rondeau entered as a buyer was unaffected by investment activities that would have resulted from disclosure. Rondeau's failure to file created precisely the kind of situation the

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[11] The reporting requirement threshhold was reduced from 10 percent to 5 percent in December 1970 to "provide public disclosure of impending corporate takeovers at a more meaningful level." H. R. Rep. No. 91-1655, 91st Cong., 2d Sess. (1970); 1970 U.S. Code Cong. & Admin. News, p. 5027.

> "An investment of between 5 and 10 percent of the securities of a company can have a significant impact on the public market for that company's stock. Shareholders of the target company are entitled to full disclosure when over 5 percent of their company's stock is to be acquired by an outside group. These acquisitions may lead to important changes in the management or business of the company and the shareholders should be fully informed." *Id.* at 5027-5028.

The SEC is presently considering the necessity or desirability of recommending legislative amendments to Congress with respect to (1) a further lowering of the reporting threshhold, and (2) adding a substantially shorter notice requirement to the present 10 day reporting requirement. SEC Securities Exchange Act Release No. 11003, Part III.F (September 9, 1974); SEC Securities Exchange Act Release No. 11088 (November 5, 1974).

[12] The price paid for these shares ranged only from $12½ to $13 per share. (A. 49-50). After the 13D information became public, the quoted price jumped to $19 to $21 per share. (A. 46).

Williams Act was designed to preclude.[13] It kept actual and potential investors either misinformed or uninformed concerning Mosinee stock. *Graphic Sciences, Inc. v. International Mogul Mines Ltd.*, [Current] CCH FED. SEC. L. REP. ¶94,834 (D.D.C. 1974).

In *Bath Industries, Inc. v. Blot*, 427 F. 2d 97 (7th Cir. 1970), a case concerning late Williams Act filing, the court dealt with the question whether a late filing "cures" the failure to file earlier:

> "If defendant-appellants were in fact required to file statements pursuant to the Williams Act sometime near mid-summer of 1969, the filing of 13D Schedules in October, 1969 may well be insufficient to cure the failure to file earlier. The purpose of the filing and notification provisions is to give investors and stockholders the opportunity to assess the insurgents' plans *before* selling or buying stock in the corporation. It additionally gives them the opportunity to hear from incumbent management on the merit or lack of merit of the insurgents' proposals. *If the defendant-appellant's late filing is sufficient, then no insurgent group will ever file until news of their existence and plan leaks out and prompts a law suit. By that time it will be too late to avoid the evils which the Williams Act is designed to eliminate.*" 427 F. 2d at 113 (second emphasis supplied).

Consistently, the Seventh Circuit in the instant case rejected Rondeau's protestation that his violation was "merely technical":

> "By failing to timely file, Rondeau effectively failed to disclose to investors and management the circumstances surrounding his potential to effect the control of Mosinee Paper while at the same time he continued to purchase securities in a market that had not been adequately apprised of such potential. Under the circumstances, Rondeau's failure to timely file was more than a mere technical violation of the Williams Act." *Mosinee Paper Corp. v. Rondeau*, 500 F. 2d 1011, 1016 (7th Cir. 1974); (A. 168).

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[13] "The persons seeking control . . . have information about themselves and about their plans which, if known to investors, might substantially change the assumptions on which the market price is based. This bill is designed to make the relevant facts known so that shareholders have a fair opportunity to make their decision." H. R. Rep. No. 1711, 90th Cong., 2d Sess. (1968); 1968 U.S. Code Cong. & Admin. News, p. 2813.

Having "considered all the circumstances concerning Rondeau's violation of section 13(d)", the court of appeals instructed the district court to enter a decree (a) enjoining Rondeau and his associates from further violations of section 13(d), and (b) that the shares (that Rondeau bought from investors who did not know what they would have known had he timely filed) "not be permitted to be voted with respect to any takeover, proxy contest, or vote for officers and membership on the board of directors for a period of five years."[14] 500 F. 2d at 1017; (A. 169-170).

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[14] The court of appeals did not specify the date from which the five-year period should run. Alternatives available to the district court on remand would include: (1) the date on which the last share was acquired without the requisite disclosure (August 4, 1971), (A. 50); (2) the date the injunction is entered; (3) the date the court of appeals entered its order remanding the case to the district court for entry of the injunction (July 16, 1974). See note 15, below.

The injunction should probably apply to the shares in the hands of Rondeau, his associates and affiliates, and anyone acquiring them from such persons for the purpose of engaging, or in connection with engaging, in a tender offer or proxy contest, but need not continue to apply if the shares are transferred to unaffiliated persons for purposes unrelated to the violation. Thus, the restriction against voting would apply to the stock only in the hands of a holder to whom the taint of the violation should be attributed. *Cf. Chris-Craft Indus., Inc. v. Piper Aircraft Corp.*, 480 F. 2d 341, 380 (n. 36) (2d Cir.), *cert. denied*, 414 U.S. 910, 414 U.S. 924 (1973); *Graphic Sciences, Inc. v. Int'l Mogul Mines Ltd.*, [Current] CCH FED. SEC. L. REP. ¶94,834 (D.D.C. 1974).

Such a decree is "appropriate to neutralize Rondeau's violation of the Act and to deny him the benefit of his wrongdoing." 500 F. 2d at 1017; (A. 170). In *Chris-Craft Industries, Inc. v. Piper Aircraft Corp.*, 480 F. 2d 341, 380 (2d Cir.), *cert. denied,* 414 U.S. 910, 414 U.S. 924 (1973), the Second Circuit held that a Williams Act violator should be denied the fruits of its illegal conduct:

> "We further hold that BPC should be denied the fruits of obtaining Piper shares illegally. We therefore direct that the district court include in its judgment an injunctive provision barring BPC from voting for a period of at least 5 years the Piper shares it obtained through the unlawful May cash purchases and those it obtained through its exchange offer."[15]

Rondeau attempts to distinguish *Chris-Craft* principally upon the ground that his illegally obtained "fruits" (2 percent of Mosinee) are not so sweet as the fruits Bangor-Punta would have enjoyed but for the injunction (14 percent of Piper Aircraft Corp.[16]). (Br. Pet. 21-22). That distinction is not meaningful. As the Seventh Circuit in *Bath Industries, Inc. v. Blot,* 427 F. 2d 97, 113 (7th Cir. 1970) observed:

> "If all that was done was to forbid a repetition of the illegal conduct, those who had unlawfully built their empires could preserve them intact * * *." (Quoting *Schine Chain Theaters, Inc. v. United States,* 334 U.S. 110, 128 (1948)).

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[15] On remand, the district court entered an injunction barring BPC from voting the shares for a period of five years from the date of its decree. *Chris-Craft Indus., Inc. v. Piper Aircraft Corp.,* 384 F. Supp. 507, 525-526 (S.D.N.Y. 1974).

[16] The injunction was ordered only with respect to the 231,828 shares (of 1,644,890 shares outstanding) that Bangor-Punta acquired in violation of the federal securities laws.

The size of the illegally acquired empire is irrelevant to the determination whether anything should be done about its illegal acquisition. It is true that in this case the block of shares illegally acquired is not a controlling block. That is passively relevant in the sense that the number of shares enjoined from being voted automatically "let[s] the punishment fit the crime." (Br. Pet. 22). *See Electronic Specialty Co. v. International Controls Corp.,* 409 F. 2d 937, 947 (2d Cir. 1969).

The district courts have followed the Seventh and Second Circuit Courts of Appeals, forbidding Williams Act violators to vote shares illegally acquired:

> "If Section 13(d) means anything, plaintiff Dopp should not be permitted to gain advantage from a course of action pursued in clear violation of law. At the very least, considerations of equity demand that Dopp be disenfranchised from voting at the December 14th meeting those shares he acquired after January 4, 1971, in excess of the 2% exemption provided by the Williams Act. *See Ozark Air Lines, Inc. v. Cox,* 326 F. Supp. 1113 (E.D.Mo. 1971).
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> * * *
>
> "Accordingly, it is ordered that . . . (2) defendants' cross-motion for a preliminary injunction be granted . . . to the extent of enjoining plaintiff Paul S. Dopp from voting those shares of Butler's stock he acquired after January 4, 1971 in excess of 2% of the total of each class of security outstanding." *Committee for New Management of Butler Aviation v. Widmark,* 335 F. Supp. 146, 155-156 (E.D. N.Y. 1971).

See also, Water & Wall Associates, Inc. v. American Consumer Industries, Inc., [1973 Decisions] CCH FED. SEC. L. REP. ¶93,943 (D.N.J. 1973) (preliminary injunction against voting all shares owned by group); *Cat-*

tlemen's Investment Co. v. Fears, 343 F. Supp. 1248, 1253 (W.D.Okla. 1972) (injunction against voting). *Cf. Graphic Sciences, Inc. v. International Mogul Mines Ltd.,* [Current] CCH FED. SEC. L. REP. ¶94,834 (D.D.C. 1974) (voting or disposal to unaffiliated persons permitted; solicitation of proxies, tender offer and any further acquisition forbidden pending trial).

At page 20 of his brief, petitioner selectively reviews some Williams Act cases to try to show that "the courts have generally insisted that violations be cured, but have imposed no further permanent or punitive penalty." From the cases selected for review[17] that generalization is ineluctable, since in none of them had shares consummately been acquired in violation of the Act. In cases where that has happened, the court has imposed some continuing limitation on the violator. *Bath Industries, Inc. v. Blot, supra; Chris-Craft Industries, Inc. v. Piper Aircraft Corp., supra; Committee for New Management of Butler Aviation v. Widmark, supra; Cattlemen's Investment Co. v. Fears, supra; Graphic Sciences, Inc. v. International Mogul Mines Ltd., supra; Water & Wall Associates, Inc. v. American Consumer Industries, Inc., supra.* Indeed, the Second Circuit recognized in one of the inapposite cases petitioner reviews that in a late filing case it might be appropriate "to penalize [the] non-disclosure and deter offerors generally from playing their cards too close to the vest." *Corenco Corp. v. Schiavone & Sons, Inc.,* 488 F. 2d 207, 214 (2d Cir. 1973).

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[17] *Butler Aviation Int'l, Inc. v. Comprehensive Designers, Inc.,* 425 F. 2d 842 (2d Cir. 1970); *Ronson Corp. v. Liquifin Aktiengesellschaft,* 370 F. Supp. 597 (D.N.J.), *aff'd* 497 F. 2d 394 (3d Cir.), *cert. denied,* — U.S. — (1974); *Corenco Corp. v. Schiavone & Sons, Inc.,* 488 F. 2d 207 (2d Cir. 1973); *Sonesta Int'l Hotels Corp. v. Wellington Associates,* 483 F. 2d 247 (2d Cir. 1973); and *Texasgulf, Inc. v. Canada Dev. Corp.,* 366 F. Supp. 374 (S.D.Tex. 1973).

"[T]he possibility of civil damages or injunctive relief serves as a most effective weapon in the enforcement of the proxy requirements," *J. I. Case Co. v. Borak,* 377 U.S. 426, 432 (1964), and Williams Act filing requirements are no different in this respect. As the Seventh Circuit warned in *Bath Industries, Inc. v. Blot, supra,* in language frequently cited by the district courts,[18] "[i]f the . . . late filing is sufficient, then no insurgent group will ever file until news of their existence and plan leaks out and prompts a law suit." 427 F. 2d at 113. Deterrence is vital. The court of appeals' direction to enter an injunction against voting the illegally acquired stock for a period of five years strongly prompts Williams Act compliance, and by implication, compliance with other disclosure requirements of the federal securities laws. That, we submit, is not only appropriate but essential to operation of the Congressional scheme for protection of investors, actual and potential, against non-disclosure of information material to their decisions whether to buy, sell or hold securities. As this Court has noted: (1) the Securities Exchange Act "quite clearly falls into the category of remedial legislation"; (2) "remedial legislation should be construed broadly to effectuate its purposes"; and (3) one of the central purposes of the Exchange Act is to "protect investors through the requirements of full disclosure. . . ." *Tcherepnin v. Knight,* 389 U.S. 332, 336 (1967). These observations are particularly pertinent to Williams Act cases. Unless there is timely compliance, the issuer is deprived of the information deemed material by statute, and is unable to fulfill its duties to make prompt public disclosure of such information.

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[18] *See, e.g., Comm. for New Management of Butler Aviation v. Widmark,* 335 F. Supp. 146, 155 (E.D.N.Y. 1971); *Cattlemen's Inv. Co. v. Fears,* 343 F. Supp. 1248, 1253 (W.D.Okla. 1972).

Petitioner argues that "Mr. Rondeau would not have been deterred by the threat of an injunction because he did not know that he was required to file a Schedule 13D and might suffer a penalty if he failed to file."[19] (Br. Pet. 17). That is not very fitting. Mr. Rondeau describes himself as a "successful and knowledgeable businessman" whose "business activities include . . . banking and a variety of investments. . . ."[20] When such businessmen are buying hundreds of thousands of dollars worth of publicly held securities, they (and their lawyers, bankers and brokers) ought to be encouraged to ascertain the laws concerning required SEC filings. Dissemination of decisions like the court of appeals' decision in this case has that salutary effect.

There is yet another reason why "neutralization" was appropriate in this case regardless of the "state of mind" of the Williams Act violator. While persons who sold Mosinee stock to Rondeau (in ignorance of the facts a filing would have disclosed) theoretically have actions for any damages incurred as a result,[21] nevertheless there are investors who were or might have been prejudiced by Rondeau's failure to file, but have no remedy to assuage their injury. Persons who purchased Mosinee stock between May 27 and August 25, 1971 may not have done so had they known of Rondeau's activities and the upheaval inspired by his violations. Changes in management, tender offers or proxy fights are often abhorrent to conservative investors planning to hold shares for an extended period of time in expectation of a stable yield with average potential for capital appreciation. In this case management suffered months of distraction trying to remedy and contend with Rondeau's non-disclosure. Such an investor, who held the stock throughout the period of artificial inflation generated by Rondeau's heavy buying over the summer of 1971, through its decline to levels at which he purchased it (and below), has no damage claim; but he is entitled to have his reasonable expectations — price and managerial stability — fulfilled. The decree ordered by the court of appeals is appropriate to that end.

Petitioner cites ***Kern County Land Co. v. Occidental Petroleum Corp.,*** 411 U.S. 582 (1973) as a holding by this Court "in another area of securities law that it will not impose a harsh penalty for a technical violation of a statute in circumstances where to impose a penalty would not further the legislative policies of the Act." (Br. Pet. 18). ***Kern County*** was a case arising under Section 16 (b) of the Securities Exchange Act of 1934, 15 U.S.C. §78p(b), which makes recoverable by the issuer any profit realized by a beneficial owner of more than 10 percent of any class of equity security of the issuer "from any purchase and sale . . . within a period of less than six months. . . ." The question in ***Kern County*** was whether a merger should be treated as a "sale" within the meaning of the statute; if it were so treated, whether there was a violation of the statute. The Court held that where the transaction involved was not a "traditional cash-for-stock" purchase or sale, liability should not attach unless the trader either had or was likely to have had access to inside information, thereby serving the express statutory purpose "of preventing the unfair use of information which may have been obtained by such beneficial owner, director or officer by reason of his relationship to the issuer. . . ." 15 U.S.C. §78p(b). Since the defendant Occidental Petroleum neither had nor was likely to have such access, there was no statutory "sale" and therefore — since there was no violation — no liability. Here, by contrast, there is a conceded violation of an unambiguous statute in circumstances where the statutory purpose to assure disclosure of relevant information was frustrated by the undisclosed acquisition of a substantial block of shares. It is submitted that failure to impose a significant sanction in such circumstances would drastically weaken the effectiveness of the Williams Act, in conflict with the legislative policies which it reflects. The courts must provide "full and effective relief" under their equity powers when the Act is violated, or the Act will not be enforced. *Cf. GAF Corp. v. Milstein,* 453 F. 2d 709, 722 (n. 26) (2d Cir. 1971), *cert. denied,* 406 U.S. 910 (1972).

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[19] This assumes (as the district court improperly "found") that Rondeau was in fact ignorant of the law. It was not appropriate to resolve his state of mind on a motion for summary judgment where conflicting inferences could be drawn. See pp. 30-34, below.

[20] Brief in Support of Defendants' Motion for Summary Judgment, Appeal Doc. No. 15, p. 4.

[21] Such an action, in which the attorneys representing Mosinee here are also representing the named plaintiff in a class, is pending in the Western District of Wisconsin (*Wisconsin Valley Trust Co. v. Rondeau et al., No.* 71-C-336, filed September 2, 1971). In that action the plaintiff has moved for a Rule 23(c) determination as to maintainability; defendants opposed the motion. There have been no further proceedings pending the outcome of the action now before this Court.

There is another answer to petitioner's recurring, rhetorical assertions that the injunction entered was too "punitive", "drastic", "inflexible", "putative", and "severe":

> "[C]ourts are authorized, indeed required, to decree relief effective to redress the violations, whatever the adverse effect of such a decree on private interests. Divestiture is itself an equitable remedy designed to protect the public interest. In *United States v. Crescent Amusement Co.,* . . . where we sustained divestiture provisions against an attack similar to that successfully made below, we said . . .: 'It is said that these provisions are inequitable and harsh income tax wise, that they exceed any reasonable requirement for the prevention of future violations, and that they are therefore punitive. . . . Those who violate the Act may not reap the benefits of their violations and avoid an undoing of their unlawful project on the plea of hardship or inconvenience.'" *United States v. E. I. duPont de Nemours & Co.,* 366 U.S. 316, 326-327 (1961) (discussing remedy of divestiture for violation of the antitrust laws).

B. The state of mind of a Williams Act violator is irrelevant to the question whether relief should be granted, and under the court of appeals' decision, district courts are not (as petitioner contends) "bound to enter an injunction for every violation of the Williams Act no matter how technical, insubstantial, or moot."

In determining the scope of relief to be granted, the court of appeals "[gave] effect especially to the district judge's findings that 'Mr. Rondeau and the other defendants did not engage in intentional covert, and conspiratorial conduct in failing to timely file the 13D schedule' . . . ." 500 F. 2d at 1017; (A. 169). For reasons explained elsewhere in this brief[22] such a finding was impermissible on a motion for summary judgment and should have been disregarded by the court of appeals. Nevertheless, assuming *arguendo* that the "finding" was proper, the decree ordered is appropriate.

As aptly stated by the Second Circuit in *GAF Corp. v. Milstein,* 453 F. 2d 709, 717-718 (2d Cir. 1971), *cert. denied,* 406 U.S. 910 (1972) (emphasis supplied):

> "That the purpose of section 13(d) is to alert the marketplace to every large, rapid aggregation or accumulation of securities, *regardless of technique employed,* which might represent a potential shift in

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[22] Note 1 above; pp. 30-34, below.

> corporate control is amply reflected in the enacted provisions.
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> * * *
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> "The history and language of section 13(d) make it clear that the statute was primarily concerned with disclosure of *potential changes* in control resulting from new aggregations of stockholdings. . . ."

The position that *no* relief may be granted absent "intentional covert, and conspiratorial conduct" is untenable in light of the statutory purpose to apprise the investing public of *potential* shifts in control. An utterly innocent failure to file by a person making substantial stock acquisitions who lacks any knowledge of the law creates the same *potential* for a shift in control as a calculated, secretive accumulation of shares by a sophisticated corporate "raider." If, as Rondeau contends, he was more innocent than culpable, this case dramatically illustrates the reason why an innocent 5 percent acquisitor should file on time. For when the violation was brought to his attention, Rondeau promptly formulated an intention "to obtain effective control of the Issuer." (A. 194). The *potential* — or a latent intent — was there from the beginning. The mere reduction of thought to writing by the act of filing was sufficient to prompt its emergence. To deny relief for such a violation abrogates the statute short of a point it is intended to reach.[23]

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[23] The law under section 16(b), 15 U.S.C. §78p(b), is analogous. Where there is a clear transgression of the objective statutory standard, neither the intent of the violator, the existence or nonexistence of the actual abuse of inside information at which the statute is directed, nor even whether the possibility of such abuse existed, is relevant. *E.g., Lewis v. The Dekcraft Corp.,* ['73-'74 Decisions] CCH FED. SEC. L. REP. ¶94,620 (S.D.N.Y. 1974). The *Kern County, supra,* "actual-potential-for-abuse threshhold test" is not applicable where the transaction is clearly within the statute, "since that potential is presumed if the elements of the section are satisfied." *Provident Securities Co. v. Foremost-McKesson, Inc.,* 506 F. 2d 601, 605 (9th Cir. 1974), *cert.*

Nor should the availability of any relief depend on whether or not there has been or is (at the time the injunction is sought) an extant tender offer or proxy fight. Petitioner's brief in the court below suggests that as soon as this action terminates in defendants' favor they will be in a position to wage a proxy fight or make a tender offer. (Br. Def.-Appellees, pp. 9, 46). In the great majority of cases arising under the Williams Act, preliminary injunctions have been sought and granted because of the perceptible imminence of a shift in control or attempt to shift control. *See e.g., Gulf & Western Industries, Inc. v. The Great Atlantic & Pacific Tea Co., Inc.,* 476 F. 2d 687 (2d Cir. 1973); *Electronic Specialty Co. v. International Controls Corp.,* 409 F. 2d 937 (2d Cir. 1969). A similar *potential* exists here.

Petitioner tries to help his case by characterizing the court of appeals' decision as something it quite clearly is not: a precedent *requiring* in every case entry of a decree like the court of appeals ordered in this case. We are told that the decision "mandates imposition of a severe penalty against an offeror — sterilization of his stock's voting rights — regardless of the factual background which led to violation of the statute" (Br. Pet. 16); "*requires* a penalty for a technical, unknowing violation * * * [or] a harsh punitive order in every case to carry out the purposes of the Williams Act" (*id.*); "requires some punitive remedy for every violation" (*id.* at 23); and "impair[s] the essential element in fashioning appropriate judgments in Williams Act cases — flexibility" (*id.* at 25). This unwarranted hysteria ignores the record that was presented. The court of appeals had before it not only the district court's decision on defendants' (petitioner's) motion for summary judgment, but also 1288 pages of deposition testimony of 20 witnesses, the affidavits of the parties and numerous documents. The court of appeals stated in its opinion that in instructing the district court to enter the decree it had "considered all the circumstances concerning Rondeau's violation of section 13(d). . . ." 500 F. 2d at 1017; (A. 169). It is in circumstances such as those present in this case — which include the acquisition of 16,384 shares of stock from investors who were not told what they should have been told before they sold 2 percent of Mosinee's common stock to Rondeau — that an injunction like the one ordered here is required.

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[23] (Continued)
granted, — U.S. —, Dkt. 74-742 (Feb. 18, 1975). Where the violation is not clearly established, the possibility of abuse becomes determinative — even if the defendant was not aware of such possibility — but intent and whether actual abuse occurred are still irrelevant. *Makofsky v. Ultra Dynamics Corp.,* 383 F. Supp. 631 (S.D.N.Y. 1974).

C. "Irreparable injury" in the classic sense of economic injury to the party seeking injunctive relief is not required where that party is acting as a "private attorney general" to enforce the federal securities laws.

In the first Williams Act case petitioner cites for "the necessity of finding irreparable harm in determining if an injunction should be granted" (Br. Pet. 26), the court said this:

> "[I]n view of the public interest in insuring fair practices and honest dealing in the acquisition of corporate shares by tender offers, a showing by plaintiff of irreparable injury in the usual sense is not a necessary prerequisite to the issuance of an injunction." *Cattlemen's Investment Co. v. Fears,* 343 F. Supp. 1248, 1252 (W.D.Okla. 1972) (injunction against voting stock acquired without Schedule 13D filing).

Accord, Sisak v. Wings & Wheels Express, Inc., ['70-'71 Decisions] CCH FED. SEC. L. REP. ¶92,991 (S.D. N.Y. 1970)[24]; *Graphic Sciences, Inc. v. International Mogul Mines Ltd.,* [Current] CCH FED. SEC. L. REP. ¶94,834 (D.D.C. 1974); *Sonesta International Hotels Corp. v. Wellington Associates,* 483 F. 2d 247, 250 (2d Cir. 1973). In this context the courts have abandoned "irreparable injury in the usual sense" in favor of a more flexible and analytical balancing of interests:

> "When presented with the situations such as the instant one, courts have often been hard put to place their finger on a specific irreparable injury flowing from the violation[s]. *See, e.g., Bath Industries, Inc. v. Blot, supra,* at p. 112-13. This is probably due to the fact that what the court seeks to enjoin is future injury. The more intelligent approach, this Court believes, is to examine the interests involved as was done in *Gulf & Western Industries, Inc. v. The Great Atlantic & Pacific Tea Company, Inc.,* Civil No. 73-1223 (2d Cir., filed March 12, 1972) with an eye towards not allowing the violator 'to eat his apple with "unclean hands."' *Gaudiosi v. Mellon,* 269 F. 2d 873, 882 (3d Cir.), *cert. denied,* 361 U.S. 902 (1959).
>
> "The Court must consider the interests of the corporation, all the shareholders (including the dissidents) and the public. *Gulf & Western Industries, Inc. v. The Great Atlantic & Pacific Tea Company, Inc., supra.* . . .

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[24] "The lack of irreparable injury to the individual plaintiffs does not necessarily preclude preliminary injunctive relief where the public interest is involved. *See Virginian Railway Co. v. System Federation No. 40,* 300 U.S. 515, 552 (1937); *Youngstown Sheet & Tube Co. v. Sawyer,* 343 U.S. 579, 609-10 (1952) (Frankfurter, J.), *Douds v. Int'l. Longshoremen's Ass'n,* 242 F. 2d 803, 811-12 (2d Cir. 1957)." *Sisak, supra* at 90,670. Contrary to petitioner's mistaken assertion (Br. Pet. 28), an injunction was granted in *Sisak.*

> "The interests of Water & Wall and the defendants merit protection but not to the point of countenancing their unlawful failure to file. This Court, however, will attempt to mold its remedy in a fashion which recognizes their interests.
>
> "Finally, the interests of the public are involved. Here ACI assumes the dual role of protecting its own interests and seeing to it that the securities laws are enforced. *J. I. Case v. Borak,* 377 U.S. 426, 432 (1964). Thus where the public interest is involved clearly and pervasively, doubts as to whether the injunction should issue should be resolved in the affirmative." *Water & Wall Associates, Inc. v. American Consumer Industries, Inc.,* [1973 Decisions] CCH FED. SEC. L. REP. ¶93,943, at 93,759 (D.N.J. 1973) (shares acquired in violation of section 13(d) disenfranchised).

It is true that Mosinee suffers no liquidated economic loss from Rondeau's holding without any limitation the 16,384 shares he unlawfully acquired. But that is not of consequence; the public interest must be considered:

> "Finally, in balancing the equities, the public interest must be considered. If G&W is in fact proceeding in violation of the antitrust and securities laws, a preliminary injunction would serve the public interest as much as A & P's private interests. In this regard, by asserting these claims, A&P is assuming a dual role, including that of a private attorney general. Since it is impossible as a practical matter for the government to seek out and prosecute every important violation of laws designed to protect the public in the aggregate, private actions brought by members of the public in their capacities as investors or competitors, which incidentally benefit the general public interest, perform a vital public service. As the Supreme Court said in *J. I. Case Co. v. Borak,* 377 U.S. 426, 432 (1964), private actions provide 'a necessary supplement' to actions by the government and 'the possibility of civil damages or injunctive relief serves as a most effective weapon in the enforcement' of laws designed to protect the public interest. Therefore, as in actions brought by the government, doubts as to whether an injunction sought is necessary to safeguard the public interest — when the public interest involved is as clear, pervasive and vital as the record here demonstrates — should be resolved in favor of granting the injunction. *See United States v. First National City Bank,* 379 U.S. 378, 383 (1965); *Mitchell v. Pidcock,* 299 F. 2d 281, 287 (5th Cir. 1962)." *Gulf & Western Industries, Inc. v. The Great Atlantic & Pacific Tea Co., Inc.,* 476 F. 2d 687, 698-699 (2d Cir. 1973).

The Second Circuit manifested the same concern in *GAF Corp. v. Milstein,* 453 F. 2d 709, 721 (2d Cir. 1971):

> "The issuer is the only party which can promptly and effectively police Schedule 13D filings, for it is fair to assume that it scrutinizes carefully changes in its stock ownership — particularly of the sort which can initiate control. And in *Borak,* the Court instructed that '[p]rivate enforcement of the proxy rules provides a necessary supplement to Commission action.' 377 U.S. at 432, 84 S. Ct. at 1560. Even if the Commission had the requisite manpower to delve into the details of each Schedule 13D filing, it does not have the issuer's day-to-day familiarity with the facts which would enable it to appraise accurately the statements in the Schedule. An already overburdened Commission staff, taxed with reviewing increased filings under the securities acts, should welcome 'a necessary supplement' to its action."

The public interests to be served by forbidding Rondeau fully to enjoy the fruits of his wrong are the interests in: (1) encouraging private enforcement of the federal securities laws by providing an incentive to sue where the damage is public rather than private; (2) fulfilling the expectation of stability in price and management not yet realized by persons who purchased not knowing of Rondeau's activities; and (3) deterring violators of the disclosure requirements, thereby insuring that information highly material to investors' decisions whether to buy, sell or hold securities will be available where shifts in control are possible.

II. ASSUMING *ARGUENDO* THAT THE STATES OF MIND OF THE PERSONS VIOLATING SECTION 13(d) ARE RELEVANT IN FASHIONING A REMEDY, AND THAT THE COURT OF APPEALS ERRED IN FASHIONING A REMEDY FOR THE VIOLATION HERE, NONETHELESS, IT CORRECTLY REVERSED THE DISTRICT COURT'S ENTRY OF SUMMARY JUDGMENT IN FAVOR OF THE DEFENDANTS BECAUSE GENUINE ISSUES OF MATERIAL FACT EXIST AS TO THE KNOWLEDGE, MOTIVES, PURPOSES AND PLANS IN THE RAPID ACQUISITION OF MOSINEE STOCK.

The district court rationalized its rejection of Mosinee's claim for relief by resolving a number of sharply disputed factual issues against Mosinee, drawing all inferences and determining all questions of credibility in Rondeau's favor. Improperly on a motion for summary judgment,[25] the court "found" ". . . that Mr. Rondeau did not know that he was required to file a Schedule 13D . . ." (A. 142); ". . . that there is no concrete evidence in the record warranting a finding that Mr. Rondeau seriously considered obtaining control of the plaintiff corporation prior to the time that he conversed with his attorney. . ." (at a point in time nearly three months after he should have filed a Schedule 13D) (A. 143); and ". . . that Mr. Rondeau and the other defendants did not engage in intentional covert, and conspiratorial conduct in failing to timely file the 13D schedule." (A. 143).

The court heard no live testimony. There was no evidentiary hearing. The court was in no position to resolve questions of fact. All the court had before it were affidavits and deposition transcripts. Yet the court made findings of fact, and it made such findings as to states of mind, motives, purposes, and knowledge. It wrote an opinion (just as petitioner here wrote his brief) as if there had been a trial. But there has been no trial, and we submit that if this Court holds that the court of appeals struck an inappropriate balance in determining the scope of relief to be granted, then Mosinee is clearly entitled to a trial, so that intention, covertness and conspiratorial involvement can properly be resolved as matters of fact.

On their motion for summary judgment defendants were required to "show that there [was] no genuine issue as to any material fact and that [they were] entitled to judgment as a matter of law." FRCP 56(c). "If, upon the proofs adduced in support of a motion for summary judgment, *any doubt remains* as to the existence of a genuine issue of material fact, such doubt must be resolved against the movant for summary judgment and the motion for summary judgment must be denied." *Zahora v. Harnischfeger Corp.*, 404 F. 2d 172, 175 (7th Cir. 1968), quoting *Moutoux v. Gulling Auto Electric, Inc.*, 295 F. 2d 573, 576 (7th Cir. 1961) (emphasis supplied).

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[25] See note 1, *supra*.

Accord, United States v. Farmers Mutual Insurance Association of Kiron, Iowa, 288 F. 2d 560, 562 (8th Cir. 1961); *Sarnoff v. Ciaglia,* 165 F. 2d 167, 168 (3d Cir. 1947); *Weisser v. Mursam Shoe Corp.,* 127 F. 2d 344, 346 (2d Cir. 1942). *Cf. Sartor v. Arkansas Gas Corp.,* 321 U.S. 620, 627 (1944).

". . . [S]ummary judgment must be denied if the evidence is such that *conflicting inferences* could be drawn therefrom." *Sarkes Tarzian, Inc. v. United States,* 240 F. 2d 467, 470 (7th Cir. 1957) (emphasis supplied). *Accord, United States v. Diebold, Inc.,* 369 U.S. 654, 655 (1962); *Empire Electronics Co. v. United States,* 311 F. 2d 175, 180 (2d Cir. 1962); *Girard v. Gill,* 261 F. 2d 695, 697 (4th Cir. 1958); *United States v. Dollar,* 196 F. 2d 551, 552-553 (9th Cir. 1952); *Paul E. Hawkinson Co. v. Dennis,* 166 F. 2d 61, 63 (5th Cir. 1948); *Ramsouer v. Midland Valley Railroad Co.,* 135 F. 2d 101, 106 (8th Cir. 1943). In their opening brief in the district court, defendants *conceded* that "Rondeau's state of mind, his purpose and plans . . . can be argued and differing inferences might be drawn." (Brief In Support Of Defendants' Motion For Summary Judgment, Appeal Doc. No. 15, p. 20). This court held in *United States v. Diebold, Inc., supra* at 655, that "[o]n summary judgment the inferences to be drawn from the underlying facts contained in [affidavits, attached exhibits and depositions] must be viewed in the light most favorable to the party opposing the motion."

"'When an issue requires determination of *state of mind* [Rondeau's knowledge of the law, his plans and purposes], it is unusual that disposition may be made by summary judgment.'" *NLRB v. Smith Industries, Inc.,* 403 F. 2d 889, 895 (5th Cir. 1968) (emphasis supplied). *Accord, Croley v. Matson Navigation Co.,* 434 F. 2d 73, 77 (5th Cir. 1971); *Empire Electronics Co. v. United States, supra; Consolidated Electric Co. v. United States,* 355 F. 2d 437, 438-439 (9th Cir. 1966). *See, Poller v. Columbia Broadcasting System, Inc.,* 368 U.S. 464, 473 (1962).

"*Credibility* of the witnesses or of the parties [in this case, Rondeau himself] may well be . . . a genuine issue [of material fact]." *United States v. United Marketing Association,* 291 F. 2d 851, 853 (8th Cir. 1961) (emphasis supplied). *Accord, Sartor v. Arkansas Gas Corp.,* 321 U.S. 620, 628 (1944); *Croley v. Matson Navigation Co., supra; Consolidated Electric Co. v. United States, supra.*

Set forth as Mosinee's Counterstatement of the Case are the facts (to which Rondeau himself and others testified) that belie his protestations of ignorance of the law and puerile intent. To reiterate those facts would serve no useful purpose. Suffice it to observe the picture defendants paint: a "knowledgeable and sophisticated businessman" (A. 43, Appeal Doc. No. 15, p. 9) pays nearly a million dollars in a period of three months for stock in a publicly-held company he thinks is mismanaged, but to whom no thought of changing management occurs until after he is through buying. The incongruity of such depiction is obvious, and

> "'A summary judgment upon motion therefor by a defendant * * * should never be entered except where the defendant is entitled to its allowance *beyond all doubt.' Traylor v. Black, Sivalls & Bryson, Inc.,* 8th Cir., 189 F. 2d 213, 216." *Mitchell v. Pilgrim Holiness Church Corp.,* 210 F. 2d 879, 881 (7th Cir.), *cert. denied,* 347 U.S. 1013 (1954) (emphasis supplied).

If defendants' violations were really as non-malefic as now portrayed by defendants, a court might properly be reluctant to order divestiture. If, on the other hand, they acquired shares implementing a plan to control Mosinee knowing there were laws pertaining to or requiring disclosure but failing to ascertain or observe them, divestiture of those shares acquired after the time of required disclosure seems an entirely appropriate remedy. We submit that in the interest of finally resolving litigation the court of appeals aptly struck the balance most favorable to defendants by fashioning relief short of divestiture. If this Court considers that that determination is error we submit that there is no alternative but a remand for trial.

CONCLUSION

For the reasons stated above, the decision of the court of appeals reversing the district court's summary judgment in favor of all the defendants (including petitioner) should be affirmed in all respects.

Respectfully submitted,

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Supreme Court, U. S.
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MAR 20 1975
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-415

FRANCIS A. RONDEAU, *Petitioner*

v.

MOSINEE PAPER CORPORATION, *Respondent.*

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITIONER'S SUPPLEMENTAL AND REPLY BRIEF

MAURICE J. MCSWEENEY
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-415

FRANCIS A. RONDEAU, *Petitioner*

v.

MOSINEE PAPER CORPORATION, *Respondent.*

On Writ of Certiorari to the
United States Court of Appeals
for the Seventh Circuit

PETITIONER'S SUPPLEMENTAL AND REPLY BRIEF

I. NEW MATERIAL

Petitioner respectfully calls the attention of the Court to *Scott v. Multi-Amp Corp.,* CCH Fed. Sec. Law Rep. ¶94,988 (D.N.J. 1974). The case became known to petitioner only after release of the CCH Report to service subscribers on March 5, 1975, after the date of filing for petitioner's brief on the merits on January 30, 1975. The Court in this case considered various alleged Williams Act violations, including violation of section 13(d). Following the weight of authority, the Court in the *Scott* case also held that injunctive relief required a finding of irreparable harm, p. 97,422, and that where the section 13(d) violation "was merely a technical one," p. 97,420, no relief was warranted, p. 94,422.

II. RESPONDENT'S NEW ISSUE IS NOT PROPERLY BEFORE THE COURT

By Supreme Court Rule 24(4), petitioner is limited in this reply brief to discussion of new issues raised for the first time in respondent's brief on the merits. Respondent has raised a new issue by arguing that if the Circuit Court's opinion should be reversed, then the entire action should be remanded to the District Court for a full trial on the merits. This argument is improper because it is not fairly within the scope of the questions accepted for review when this Court issued its writ of certiorari. The well established principle is that an issue nowhere mentioned in the petition for certiorari is not before the Supreme Court for consideration, *Namet v. U.S.,* 373 U.S. 179 at 190 (1963). "We disapprove the practice of smuggling additional questions into a case after we grant certiorari. The issues here are fixed by the petition . . . ," *Irvine v. California,* 347 U.S. 128 at 129 (1954). When an issue is not raised in the petition, that issue is not properly before the Court, *Lawn v. U.S.,* 355 U.S. 339 at 363 (1958), reh. den. 355 U.S. 967 (1958); *National Licorice Co. v. NLRB,* 309 U.S. 350 at 357 (1940); *Phillips Chemical Co. v. Dumas Independent School Dist.,* 361 U.S. 376 at 386 (1960), reh. den. 362 U.S. 937 (1960). Respondent did not seek a writ of certiorari in this action, and the questions presented to and accepted by the Court neither state nor fairly comprise the issue of the validity of the District Court's resolution of the question of whether there were any genuine issue as to any material fact.

As stated in his brief on the merits, petitioner's questions were:

1. Did the Court of Appeals correctly decide that a showing of irreparable harm was not a prerequisite to granting injunctive relief under section 13(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78m(d)?

2. Did the Court of Appeals correctly decide that an unintentional, non-covert and non-conspiratorial violation of section 13(d) must be "neutralized" to deny the violator the benefit of his wrongdoing by the entry of a decree, after the violation has been corrected by filing a legally sufficient Schedule 13D, enjoining the violator from voting the shares he acquired in the period between the date he should have filed his 13D Schedule and the date it was actually filed?

By raising this new issue respondent is seeking to overturn both the District Court judgment and the judgment of the Court of Appeals without having filed a cross-petition for certiorari. This it may not do, *Alaska Ind. Bd. v. Chugach Assn.,* 356 U.S. 320 at 325 (1958). "What he may not do in the absence of a cross-appeal is to 'attack the decree [below] with a view either to enlarging his own rights thereunder or of lessening the rights of his adversary . . .,' " *Morley Co. v. Md. Casualty Co.,* 300 U.S. 185 at 191 (1937). "A respondent . . . may not attack [the judgment below] even on grounds asserted in the Court below, in an effort to have this Court reverse it, when he himself has not sought review of the whole judgment, or of that portion which is adverse to him," *LeTulle v. Scofield,* 308 U.S. 415 at 421-2 (1940).

III. ALTERNATIVELY, RESPONDENT'S NEW ARGUMENT IS WITHOUT MERIT

Even if respondent's new issue were properly before the Court there is no basis for remanding this action for trial. The District Court's findings and conclusions were accepted by the Court of Appeals (App. 169, 175). Respondent now seeks a third review of the question of whether summary judgment was appropriate here, although it has not convinced even one of four judges at two independent hearings to accept its view of the facts. As noted by respondent at pages 3-4 of its brief opposing the petition for a writ of certiorari, there was fairly extensive discovery in this action. The relevant factual allegations were before the District Court, which was able to determine the nonexistence of any genuine issue as to any material fact from a record including extensive discovery. The Court of Appeals found no error as to the findings of no factual dispute.

Respondent argues at length that the standards necessary for summary judgment were not met and strongly urges the facts which it believes make the District Court decision improper. Petitioner does not dispute respondent's general statements of law, but as to the so-called counter-statement of facts, petitioner would only note that respondent has unsuccessfully urged those same arguments twice before. If the District Court is to be reversed, there must be critical flaws in its findings and conclusions. It is not a critical flaw for the District Court to make certain fact findings by way of explanation of its

conclusion that there were no genuine disputes as to the material and operative facts.[*]

Although findings of fact are unnecessary under Federal Rule of Civil Procedure 56 (Rule 52(a), last sentence), such findings are often appropriate because they may be helpful to the appellate court, *Gurley v. Wilson*, 239 F. 2d 957 (D.C. Cir. 1956); *Wolf v. Thomas*, 271 F. 2d 634 (6th Cir. 1959); *Prudential Ins. Co. of America v. Goldstein*, 43 F. Supp. 767 (E.D.N.Y. 1942). See also *Dolgow v. Anderson*, 438 F. 2d 825 at 829 (2nd Cir. 1971); *Rogers v. General Electric Co.*, 341 F. Supp. 971 at 972 *et. seq.* (W.D. Ark. 1972); *Millstein v. Leland Hayward Inc.*, 10 F.R.D. 198 (S.D.N.Y. 1950). Indeed, in the appropriate case summary judgment has been reversed on appeal because there were no findings of fact, *Winter Park Telephone Co. v. Southern Bell Telephone & Telegraph Co.*, 181 F. 2d (5th Cir. 1950). The propriety of summary judgment will depend on the circumstances of each particular case. ". . . [I]t cannot be stated too strongly that no type of action or issue is immune from a summary adjudication and that there will be instances when the rendition of a summary judgment is clearly called for, although the particular action or issue is one which does not lend itself to a summary adjudication as a general proposition." 6 *Moore's Federal Practice* ¶56.17[1].

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[*] The District Court's decision may properly be viewed as incorporating its statement of the facts respecting which there was no genuine issue, and as the basis for its conclusion that summary judgment was appropriate in view of the absence of a genuine issue of material fact. If this Court is at all inclined to consider respondent's so-called counter-statement of the case at pages 2-8 of its brief (which, we submit, would amount to a hearing *de novo* of petitioner's motion for summary judgment), the response to respondent's counter-statement will be found in petitioner's briefs filed in the Seventh Circuit Court of Appeals.

Respondent has already had the District Court's decision reviewed in the Court of Appeals which was bound to consider the facts in the light most favorable to respondent. Neither Court found any genuine issue as to any material fact.

IV. CONCLUSION

Petitioner respectfully requests that respondent's argument in favor of a new trial be refused consideration because it is not properly before the Court. Alternatively, petitioner respectfully requests that respondent's new argument be rejected as contrary to the well supported conclusions of the Court of Appeals and the District Court as to the nonexistence of any relevant factual disputes between the parties.

Respectfully submitted,

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